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**The Gazette of India.**

JANUARY TO JUNE 1882.

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# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 7, 1882.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th January, 1882, and was referred to a Select Committee:—

No. 1 of 1882.

*A Bill to provide for the levy of Rates on Land in the Central Provinces.*

WHEREAS it is expedient to provide in the territories administered by the Chief Commissioner of the Central Provinces for the levy on land of rates to be applied to local purposes; It is hereby enacted as follows:—

#### I.—Preliminary.

1. This Act may be called "The Central Provinces Local Rates Act, 1882":

It extends only to the territories administered by the Chief Commissioner of the Central Provinces:

And it shall come into force on such date as the Chief Commissioner, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette direct.

Commencement.

#### II.—Assessment.

Act III 2. When the term of settlement of any estate expires, such estate shall be liable to the payment of such rate, not exceeding five per cent. on its gross rental, as the Chief Commissioner, with the previous sanction of the Governor General in Council, from time to time imposes.

Assessment of rate on expiry of settlement. Such rate shall be paid by the landlord of such estate in addition to any land-revenue for the time being assessed thereon.

The officer assessing such rate on any estate shall determine what for the purposes of this section shall be deemed to be the gross rental of such estate; Provided that if the Chief Commissioner so directs, the gross rental of any estate shall for such purposes be deemed to be—

- (a) in cases in which the settlement of the land-revenue is liable to periodical revision, double the amount of the land-revenue for the time being assessed on such estate;
- (b) in cases in which the land-revenue has been wholly or in part released, double the amount which if the settlement were liable to such revision would be assessable as land-revenue on such estate.

3. The proceeds of all rates levied under this Act shall be carried to the credit of a general provincial fund. Sec. 10, Act III of 1874 modified.

4. The Chief Commissioner may, from time to time, allot from such fund such amounts as he thinks fit, to be applied for the benefit of each district for expenditure on all or any of the following purposes, namely:— Sec. 11, Act III of 1874 modified.

(a) The construction, repair and maintenance of roads and other means of communication:

(b) The construction and repair of school-houses, the maintenance and inspection of schools, the training of teachers and the establishment of scholarships:

(c) The maintenance of the rural police and district-post:

(d) The construction and repair of hospitals, dispensaries, lunatic asylums, markets, wells and tanks, the payment of all charges connected with the purposes for which such buildings or works have been constructed, and

(e) any other local works likely to promote the public health, comfort or convenience:

Provided that the amounts so allotted in any year for the benefit of any district shall not be less than nine-tenths of the total sum levied under this Act in such district for such year.

Sec. 12, Act  
III of 1878.

5. In the case of works which benefit more districts than one, the Chief Commissioner may determine what proportion of the expense of the work shall be borne by each of the districts benefited thereby; and such proportion shall be payable out of the allotments made as aforesaid for the benefit of such districts respectively.

Sec. 13, Act  
III of 1878,  
modified.

6. Any portion of such allotment remaining unexpended at the end of the year in which the allotment was made may, at the discretion of the Chief Commissioner, be re-allotted for expenditure for the benefit of the same district, or may be expended for all or any of the purposes mentioned in section four in such district as the Chief Commissioner directs.

Sec. 14, Act  
III of 1878,  
modified.

7. Accounts of the receipts in respect of all rates levied under this Act and of the receipts and expenditure of such allotment shall be kept in each district in such manner as the Chief Commissioner may from time to time direct.

8. The Chief Commissioner shall appoint in any district a Committee of not less than six persons for the purpose of determining how the allotment, mentioned in section four shall be applied, and for the supervision and control of the expenditure of such allotment.

Not less than one-half of the members of such Committee shall be persons not in the service of Government, who own or occupy land in such district and reside therein.

### III.—Miscellaneous.

9. In all matters connected with the assessment and collection of any rate leviable under this Act, an appeal shall lie to the Commissioner from the order of the officer assessing or collecting such rate.

The Commissioner's decision on such appeal shall be final; but may be reviewed by the Chief Commissioner.

10. No appeal shall lie after the expiration of ninety days from the date of the order complained of; and in computing such period of limitation the provisions of the Indian Limitation Act, 1877, shall apply.

Sec. 10, Act  
III of 1878.

11. All sums due on account of any rate imposed under this Act shall be recoverable as if they were arrears of land-revenue payable directly to Government and due on the land on which the rate is payable.

12. All cesses which before this Act comes into force have been imposed on land for the maintenance of roads, schools or the district-post and which are now payable, shall be deemed to be rates imposed hereunder.

13. The Chief Commissioner may, by notification in the official Gazette, from time to time—

(a) prescribe by what instalments and at what times rates imposed hereunder shall be payable, and by whom they shall be respectively assessed, collected and paid;

(b) prescribe the manner in which the members of any Committee under section eight shall be appointed or removed, and define consistently with this Act the functions and authority of such Committee;

(c) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement; and

(d) exempt any portion of the territories under his administration from the operation of this Act; or exempt any land from liability to pay the whole or any part of any rate under this Act; and vary or cancel such exemptions.

### STATEMENT OF OBJECTS AND REASONS.

In the Central Provinces Land-revenue Bill provision was made for the levy of rates on land in the Central Provinces. The Select Committee, however, were of opinion that it was not expedient to make such a provision in an enactment relating to the assessment and collection of land-revenue, and that it was better to dissociate the local rates from land-revenue, and to provide for their assessment by a separate enactment.

2. The present Bill has accordingly been prepared on the lines of the North-Western Provinces Local Rates Act, 1878. It provides for the assessment and collection of local rates on land in the Central Provinces, and for the expenditure of the receipts from those rates on works of public utility in those Provinces. No change is made by the Bill in the rates at present payable by the owners of land. Such rates are maintained and made leviable under the Bill, but they cannot be altered until the period of the existing settlement expires.

C. H. T. CROSTHWAITE.

The 29th December, 1881.

R. J. CROSTHWAITE,  
Offg. Secy. to the Govt. of India.





## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th January, 1882 :—

We, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns was referred, have the honour to report that we have considered the Bill No. II and the papers noted in the margin, and to submit this our report.

Minute by the Hon'ble Sir R. Garth, Chief Justice, High Court, Calcutta, dated 8th May, 1881 [Papers No. 9].  
 Extract from Note from the Hon'ble Sir R. Garth, Chief Justice, High Court, Calcutta, to Hon'ble Whitley Stokes [Papers No. 9].  
 From Chief Secretary to Government, Madras, No. 1283, dated 29th June, 1881, and enclosures [Papers No. 10].  
 „ Under-Secretary to Government, Bombay, No. 5827, dated 7th June, 1881, and enclosure [Papers No. 11].  
 „ Officiating Registrar, High Court, Calcutta, No. 1503, dated 11th July, 1881, and enclosure [Papers No. 12].  
 „ Shamarav Vithal, Secretary, Vakils' Association, Western India, dated 25th June, 1881 [Paper No. 13].  
 „ Mr. B. R. Kotewal, Bombay, No. 98, dated 7th September, 1881, and enclosure [Papers No. 14].  
 „ Under-Secretary to Government, Bombay, No. 5189, dated 8th August, 1881, and enclosures [Papers No. 15].  
 „ Under-Secretary to Government, Bombay, No. 6016, dated 18th September, 1881 [Papers No. 16].  
 „ Under-Secretary to Government, Bombay, No. 6146, dated 19th September, 1881, and enclosures [Papers No. 16].  
 „ Secretary to Government, Bengal, No. 3369J., dated 30th August, 1881, and enclosures [Papers No. 17].  
 „ Chief Secretary to Government, Madras, No. 2524, dated 9th December, 1881, and enclosures [Papers No. ].

the Act comes into force.

3. In section 9, we have given the Small Cause Court power, with the previous sanction of the High Court, to make rules providing for all matters not specially provided for by the Act.

4. It has been represented that petty claims in respect of collisions occurring in the harbour are brought in the Bombay Small Cause Court, and that it will cause inconvenience to the public if the jurisdiction of the Court in such cases is held to be excluded by section 19, clause (m). We have therefore made that clause run thus :—“ Suits for compensation in respect of collisions on the high seas.”

5. It is, we think, inexpedient to permit a defendant to oust the jurisdiction of the Small Cause Court by raising questions as to religious rites or ceremonies, and we have therefore omitted clause (l) of section 9 of the Bill as re-published.

6. The provisions of section 23 of the Bill, which extend certain portions of the Code of Civil Procedure to the Small Cause Courts, have been generally objected to. It is said that the procedure thus applied will cause delay in the trial of suits and defeat the object for which those Courts are established. We consider that the procedure prescribed in the section is not requisite in suits for an amount or value not exceeding one thousand rupees, but that it is expedient that it should be followed in suits for a greater amount or value. We have therefore added a clause giving the Court power, subject to the control of the Local Government, to declare that, in the case of suits for an amount or value not exceeding one thousand rupees, the whole or any part of that procedure shall not extend and be applied to the Small Cause Court, or that it shall extend and be applied with such modifications as the Court, subject to such control, may think fit. We have also omitted Chapter X of the Code of Civil Procedure (Discovery and Admission of Documents) from the second schedule, as its provisions do not appear to us to be suitable for a Small Cause Court.

7. We have also modified section 24, which declares what shall be deemed to be a *res judicata*. We have limited the application of the section to Courts other than the Small Cause Court, and have omitted the illustrations.

8. Section 28 of the Bill as re-published, which bars applications for the execution of decrees if presented after three years from the date of the decree, contained the rule in force in the

Calcutta Small Cause Court. We consider that a special enactment on this subject is unnecessary, and we have accordingly omitted the section, and left the period of limitation in the case of such applications to be determined by the Indian Limitation Act, 1877.

9. It is objected that the provisions of section 40 of the Bill as re-published (now section 39), which allow an application for re-hearing to be made to the High Court, will deprive the decisions of the Small Cause Court of their finality, and give rise to increased litigation and expense. We think that in the case of suits for an amount or value exceeding one thousand rupees the judgment of the Small Cause Court should not be absolutely final. There should be no appeal in such cases, but the parties should have the power, on certain conditions, of obtaining a re-hearing. In suits for a lesser amount, we think the judgment should be final as it is at present, and we have therefore amended the section so as to permit applications under it to be made only in suits for an amount or value exceeding one thousand rupees.

10. We think that it will be convenient to have all the law peculiar to the Presidency Small Cause Courts within the compass of a single enactment, and we have therefore repealed the Distress Act, 1875, and re-enacted it with such amendments as seemed necessary to make it harmonize with the rest of the measure.

11. Section 72 of the Bill as re-published (now section 90) prohibited attorneys of the High Court from addressing the Court or examining witnesses in suits for an amount or value exceeding one thousand rupees. This prohibition has been very generally objected to and we have withdrawn it. At the same time we see no reason for giving this privilege to pleaders of the Small Cause Court. The Small Cause Court never had jurisdiction in such suits before, and the pleaders consequently never have had the privilege of addressing a Court in cases of such importance.

12. The Bill has been duly published, and we consider that the amendments now made are of sufficient importance to require its re-publication. We have accordingly altered the date of its commencement from the first of January, 1882, to the first of March, 1882, and recommend that it now be re-published.

W. STOKES.

J. GIBBS.

JOTINDRA MOHAN TAGORE.

I agree that the amendments and changes made by the Select Committee are improvements, and I agree that the Bill should be re-published, but I am not prepared to vote for its being passed.

G. H. P. EVANS.

*The 28th December, 1881.*

### No. III.

## THE PRESIDENCY SMALL CAUSE COURTS BILL, 1882.

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## No. III.

*A Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.*

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called  
 Short title. "The Presidency Small Cause Courts Act, 1882"; and it shall come into force on the first day of March, 1882.  
 Commencement.

But nothing herein contained shall affect the provisions of the Army Act, 1881, section 151, or the rights or liabilities of any person under any decree passed before that date.

2. On and from the day on which this Act comes into force the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted, appointments made and securities given under any of the said enactments shall, as far as may be, be deemed to have

been respectively constituted, made and given under this Act.

All references to any enactment hereby repealed made in Acts passed prior to the day on which this Act comes into force shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

3. In Act No. XXIII of 1850 (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures "Act VII 1847," the words and figures "The Presidency Small Cause Courts Act, 1882, Chapter VIII," shall be substituted; the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners" the words "the Judges of the Court of Small Causes at Calcutta," shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures "chapter XXXIX," the words and figures "and by the Presidency Small Cause Courts Act, 1882," shall be inserted

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

## CHAPTER II.

## CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence, under superintendence, of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

All barristers who when this Act comes into force are, or are acting as, Judges of the Small Cause Court shall, for the purposes of this sec-

For re-see Act 1871, Act X 1879.

New. See 81 H. C. I C. J.) and sec Act X

See Act of 1865, c

Act 11 1850, c

tion, be deemed to be advocates of a High Court.

XXVI Rank and precedence 8. The Chief Judge shall  
s. 14. of Judges. be the first of the Judges  
in rank and precedence.

II of The other Judges shall have rank and preced-  
s. 6. ence as the Local Government may, from time to  
time, direct.

II of 9. Except as otherwise provided by this  
119. or any other law for the  
IX of time being in force, the  
23.) Small Cause Court may, with the previous sanc-  
tion of the High Court, make rules to provide, in  
such manner as it thinks fit, for all matters not  
specially provided for by this Act, and for the  
exercise by one or more of its Judges of any powers  
conferred on the Small Cause Court by this Act  
or by any other law for the time being in force.

VI of 10. Subject to such rules, the Chief Judge may,  
14. Chief Judge to distri- from time to time, make  
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of 11. Save as hereinafter otherwise provided,  
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of the majority shall prevail; and if the Court is  
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ing, shall have the casting voice.

II of 12. The Small Cause Court shall use a seal of  
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24.) scribed by the Local Government.

of 13. The Local Government may, from time to  
13. Appointment of Regis- time, appoint an officer to be  
trar and ministerial called the Registrar of the  
officers. Court, and to be the chief  
ministerial officer of the Court;  
and the Chief Judge may, from time to time,  
subject to the control of the Local Government,  
appoint as many clerks, bailiffs and other minist-  
erial officers as may be necessary for the administra-  
tion of justice by the Court and for the exercise  
and performance of the powers and duties con-  
ferred and imposed on it by this Act or any other  
law for the time being in force.

IX of The Registrar and other officers so appointed shall  
14. Powers and duties of exercise such powers, and dis-  
such officers. charge such duties, of a minist-  
II of erial nature as the Chief Judge may, from time  
23. to time, by rule, direct.

II of The Chief Judge may suspend or remove any  
70. Registrar or other officer so appointed; but the  
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shall be subject to the orders of the Local Govern-  
ment.

14. The Local Government may invest the  
Registrar with the powers  
of a Judge under this Act  
for the trial of suits in  
which the amount or value  
of the subject-matter does not exceed twenty  
rupees. And, subject to the orders of the Chief  
Judge, any Judge of the Small Cause Court may,  
whenever he thinks fit, transfer from his own file to

the file of the Registrar any suit which the latter  
is competent to try.

15. No Judge or other officer appointed under  
this Act shall, during his continuance as such Judge  
or officer, either by himself  
Judge or other officer not to practise or trade. Act IX of 1850, ss. 9 and 17.

or as a partner of any other person, practise or act,  
either directly or indirectly, as an advocate, attor-  
ney, vakil or other legal practitioner, or be  
concerned, either on his own account or for any  
other person, or as the partner of any other person,  
in any trade or profession.

Any such Judge or officer so practising, acting  
or concerned shall be deemed to have committed an  
offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to  
prohibit any such Judge or officer from being a  
member of any company incorporated or registered  
under Royal Charter, Letters Patent, Act of  
Parliament or Act of any British Indian legisla-  
ture.

### CHAPTER III.

#### LAW ADMINISTERED BY THE COURT.

16. All questions other than questions relat-  
ing to procedure or practice  
Questions arising in suits, &c., under Act to be decided according to law administered by High Court. Cf. Act XVII of 1875. See s. 37 of Act IX of 1850.  
which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

### CHAPTER IV.

#### JURISDICTION IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each  
Local limits of juris- of the Small Cause Courts shall be the local limits for  
diction of Court. the time being of the ordinary original civil juris-  
diction of the High Court.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—  
Suits in which Court has jurisdiction. Act IX of 1850, ss. 25 and 32; Cf. Act X of 1877, s. 11.  
when the amount or value of the subject-matter does not exceed two thousand rupees: s. 106, s. 24. and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain within such local limits; or

(c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.



*Explanation I.*—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

*Explanation II.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation III.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Act IX of  
1860, s. 25.

Suits in which Court has no jurisdiction. 19. The Small Cause Court shall have no jurisdiction in—

See 5 Bom. H.  
C. Rep. (O.  
C. J.) 1.

(a) suits concerning the assessment or collection of the revenue;

(b) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

Act X of  
1877, s. 10,  
cls. (a) to (d).

(d) suits for the recovery of immoveable property;

(e) suits for the partition of immoveable property;

(f) suits for the foreclosure or redemption of a mortgage of immoveable property;

(g) suits for the determination of any other right to or interest in immoveable property;

(h) suits for the specific performance or rescission of contracts;

(i) suits to obtain an injunction;

(j) suits for the cancellation or rectification of instruments;

(k) suits to enforce a trust;

(l) suits for a general average loss and suits on policies of insurance on sea-going vessels;

(m) suits for compensation in respect of collisions on the high seas;

(n) suits for compensation for the infringement of a patent, copyright or trademark;

(o) suits for a dissolution of partnership or for an account of partnership-transactions;

(p) suits for an account of property and its due administration under the decree of the Court;

(q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(r) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(s) suits for declaratory decrees;

(t) suits for possession of a hereditary office;

(u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

10 & 20 Vic.,  
s. 198, s. 27

(v) suits on any judgment of a High Court;

(w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

20. When the parties to a suit which, if the Act XXVI of 1864, s. 3.

Court may by consent try suits beyond pecuniary limits of jurisdiction.

amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the

Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed. Act IX of 1860, s. 18

Suits by and against officers of Court.

party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section twenty-one applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff; Act IX of 1860, s. 10 Act XXVI of 1864, s. 2.

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court. High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

## CHAPTER V.

### PROCEDURE IN SUITS.

23. The portions of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act.

Portions of Civil Procedure Code extending to the Court. second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act.

Provided that, in the case of all or any suits for an amount or value not exceeding one thousand rupees, the Court may, subject to the control of the Local Government, from time to time, by notification in the official Gazette, declare that any of the said portions of the said Code shall not extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications as the Court, subject to the control aforesaid, may think fit.

**24.** Notwithstanding anything contained in section 13 of the Code of Civil Procedure, no decision passed under the provisions of this Act shall in any Court other than the Small Cause Court be conclusive as to anything except the right at the time of such decision to the relief granted thereby, or the absence of a right at such time to any relief claimed by the plaintiff and withheld by such decision.

**25.** Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

**26.** When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same :

Provided that a document may be returned at any time before any of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original: Provided also that no document shall be returned which by force of the decree has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

**27.** In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

**28.** Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to

such officer the judgment-debtor or the property to be attached, as the case may be.

**29.** When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

**30.** Whenever any judgment-debtor, who has been arrested in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged.

**31.** Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness or other sufficient cause, to pay the amount of the decree, or if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree or make such order as it thinks fit.

**32.** If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—to the High Court;

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

**33.** Notwithstanding anything contained in the Code of Civil Procedure, any minor may sue in certain cases as if of full age, and may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

**34.** Any non-judicial or quasi-judicial act which the Code of Civil Procedure requires to be done by a Judge, and any act which may be done by

a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

**35.** The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

**36.** The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

**37.** Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

#### CHAPTER VI.

##### NEW TRIALS AND RE-HEARING.

(Cl. Act XI of 1866, s. 21.)  
(Cl. rule 28.)

**38.** Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive;

but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree

passed under section 522 of the Code of Civil Procedure) order a new trial to be held

upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

**39.** Any party may, within eight days after the judgment in any suit in which the amount or value of the subject-matter exceeds one thousand rupees, apply to the High Court for an order that such suit may be re-heard.

Such application shall be supported by affidavits, and, in case the applicant has appeared by advocate, vakil or attorney, by a certificate from the leading counsel at the hearing that in his opinion there are good grounds for re-hearing the suit, and if, on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure, relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

**40.** On the day fixed under section thirty-nine or Mr. Procedure at re-hearing. on any other day to which the hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree or order under this section.

**41.** Every decree or order made by any High Mr. Execution of decree of Court upon any such re-hear- dra High Court. ing may either be executed by such High Court in the same manner as other decrees or orders of such Court or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

#### CHAPTER VII.

##### RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

**42.** When any person has had possession of any immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of, another person, or of some person through whom such other person claims, and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

**43.** The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

**44.** If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-two, be entitled to an order addressed to



a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

*Explanation.*—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

45. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

46. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

47. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

48. Whenever on an application being made under section forty-two the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-four.

Nothing contained in section twenty-two shall apply to suits under this section.

49. In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

50. Recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

## CHAPTER VIII.

### DISTRESSES.

51. This chapter extends to every place within the local extent of the local limits of the ordinary original civil jurisdictions of the High Courts of judicature at Fort William, Madras and Bombay. But nothing contained in this chapter applies—

- (a) to any rent due to Government;
- (b) to any rent which has been due for more than twelve months before the application mentioned in section fifty-four.

52. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this chapter, and may from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

53. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

54. Any person claiming to be entitled to arrears of rent of any house or premises to which this chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

- Act I of 1875, s. 7. **55.** The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form contained in the same schedule (marked B) addressed to any one of such bailiffs.
- Issue of distress-warrant.
- The Judge may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

- Act I of 1875, s. 8. **56.** Every distress under this chapter shall be made after sunrise and before sunset, and not at any other time.
- Time for distress.

- Act I of 1875, s. 9. **57.** The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter:
- What places bailiff may force open.
- Provided that he shall not enter or break open the door of any room appropriated for the *zanáná* or residence of women, which by the usage of the country is considered private.

- Act I of 1875, s. 10. **58.** In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may in the bailiff's judgment be sufficient to cover the amount of the said rent, together with the costs of the said distress:
- Property which may be seized.
- Provided that the bailiff shall not seize—
- (a) things in actual use; or
  - (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or
  - (c) the debtor's necessary wearing apparel; or
  - (d) goods in the custody of the law.

- Act I of 1875, s. 11. **59.** The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.
- Impounding distress.

- Act I of 1875, s. 12. **60.** On seizing any property under section fifty-eight the bailiff shall make an inventory of such property, and shall give a notice in writing to the effect of the form in the third schedule hereto annexed (marked C) to the debtor, or to any other person upon his behalf in or upon the said house or premises.
- Inventory.
- Notice of intended appraisal and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

Copies of inventory and notice to be filed.

- Act I of 1875, s. 13. **61.** The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly
- Application to discharge or suspend warrant.

constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just, and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

- 62.** If any claim be made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.
- Claim to goods distrained made by a stranger.
- Act I of 1875, s. 14.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

- 63.** In any case under section sixty-one or section sixty-two the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit, and may for that purpose make any enquiry he thinks necessary;
- Power to award compensation to debtor or claimant.
- Act I of 1875, s. 15.
- and the order of the Judge awarding or refusing such compensation shall bar any suit in respect of injury caused by the distress.

- 64.** In any application under section sixty-one or any claim under section sixty-two, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.
- Power to transfer to High Court cases involving more than Rs. 1,000.
- Act I of 1875, s. 16.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment

of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit in respect of injury caused by the distress which gave rise to the case wherein such order was made.

- 1875, 65. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form in the third schedule hereto annexed (marked D).  
 Appraisalment.  
 Notice of sale.
- The bailiffs shall file in the same Court a copy of every notice given under this section.

- 1875, 66. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall on realizing the proceeds pay over the amount thereof to the Registrar of the Small Cause Court, and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor:  
 Sale.  
 Application of proceeds.
- Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

- 1875, 67. No costs of any distress under this chapter shall be taken or demanded except those mentioned in the part of the third schedule hereto annexed (marked E).  
 Costs of distresses.
- The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

- 1875, 68. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Act, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses shall be duly entered.  
 Account of costs and proceeds.
- He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

- 1875, 69. No distress shall be levied for arrears of rent, except under the provisions of this chapter;  
 Bar of distresses except under this chapter.
- And any person, except a bailiff appointed under section fifty-two, levying or attempting to levy any such distress shall, on conviction before a Presidency Magistrate, be liable to be
- Penalty for making illegal distresses.

punished by fine which may extend to five hundred rupees and imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

## CHAPTER IX.

### REFERENCES TO HIGH COURT.

70. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,  
 Reference when compulsory.
- or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,  
 Act XI of 1865, s. 32.  
 Act XXVI of 1864, s. 7.
- the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 817 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.  
 Ordinary reference provided for by Act XLVI of P. Code.

71. When judgment is given under section seventy contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment.  
 Act XXVI of 1864, s. 8.  
 See 14 B. L. R., p. 182.
- Security to be furnished on such reference by party against whom contingent judgment given.

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

- Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.  
 Act IX of 1880, ss. 19 & 20.  
 Act XXVI of 1864, s. 11.
- If no such security given, party to be deemed to have submitted to judgment.

## CHAPTER X.

### FEE AND COSTS.

72. A fee not exceeding—  
 Institution-fee.
- (a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,  
 Act IX of 1850, s. 20.  
 Mr. Kennerly's Bill, s. 92.
- (b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,  
 shall be paid on the plaint in every suit, and every application under section thirty-nine or section forty-two; and no such plaint or application shall be received until such fee has been paid.
- A fee of ten rupees shall be paid on the filing of every agreement under Chapter XXXVIII of the Code of Civil Procedure.

73. The fees specified in the third and fourth columns of the fourth Schedule hereto annexed shall be  
 Fees for processes.
- Act IX of 1850, ss. 19 & 20.  
 Act XXVI of 1864, s. 11.



paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

Act IX of  
1850, s. 20.

**74.** Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Act IX of  
1850, s. 20.

**75.** The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-two made, by poor persons, and may issue processes on behalf of such persons, without payment of the fees mentioned in sections seventy-two and seventy-three, or on a part-payment of such fees.

Act IX of  
1850, s. 20.

**76.** The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections seventy-two and seventy-three:

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Act XXVI of  
1864, s. 13.

**77.** The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

**78.** Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870, saved.

#### CHAPTER XI.

##### MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

Act XVII of  
1875, s. 70;  
Act XVII of  
1877, s. 36;  
Act IX of  
1850, s. 80.

**79.** The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Act IX of  
1850, s. 85.

**80.** If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or

warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby

**81.** If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or default of officers. Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

**82.** For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

**83.** Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

#### CHAPTER XII.

##### CONTEMPT OF COURT.

**84.** When any such offence as is described in section 175, 178, 179, 180 or 228 of the Indian Penal Code is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to one month unless such fine is sooner paid.

**85.** In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

**86.** If the Court considers that a person accused of any offence referred to in section eighty-four and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section eighty-four, the Court, after recording the facts constituting the offence and the statement of the accused as

hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

72. 87. When the Court has, under section eighty-four or section eighty-six, sentenced an offender to punishment, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

73. 88. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section eighty-four or eighty-six.

89. Any person deeming himself aggrieved by an order under section eighty-four or section eighty-eight may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

### CHAPTER XIII.

#### MISCELLANEOUS.

90. No person other than an advocate, vakil or attorney of the High Court, or a person who is at the time this Act comes into force a pleader of the Small Cause Court, shall appear, plead or act in any suit or proceeding in the Small Cause Court under this Act, and no person other than—

- (a) an advocate of the High Court instructed by a vakil or attorney of such Court or by a pleader of the Small Cause Court, or  
(b) a vakil or attorney of the High Court, shall address the Court or examine witnesses at the hearing of any such suit, in which the amount or value of the subject-matter exceeds one thousand rupees.

Nothing in this section shall affect the right of any party to conduct his own case or that of any

other party to the suit, or the right of any recognized agent of a party under the Code of Civil Procedure as applied by this Act.

91. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Persons by whom process may be served.

92. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

93. The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Court to furnish records, &c., called for by Local Government or High Court.

94. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

95. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

Certain persons exempt from arrest by Court.

96. No suit shall lie upon any decree of the Small Cause Court.

97. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

Place of imprisonment.

98. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

99. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

Tender in suit for anything done under Act.

100. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

101. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

Limitation of prosecutions.

102. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

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Limitation of prosecutions.

106. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

## THE FIRST SCHEDULE.

(See section 2.)

## ENACTMENTS REPEALED.

## A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

## B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850.	The whole.
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
I of 1875 ...	To regulate Distresses for Rents in the Presidency-towns.	The whole.
X of 1877 ...	The Code of Civil Procedure.	Section eight, para. 2.

## C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

## THE SECOND SCHEDULE.

(See section 23.)

## PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY: Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24 and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances, Applications and Acts, except section 37, clause (b), and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (e), section 55, section 57, clause (b), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66 and 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER XI.—Settlement of issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207 and 211 to 215 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of Requiring Security for Costs.



CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVII.—Suits by or against Government, or public officers.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of immoveable property.

CHAPTER XXXV.—Interlocutory orders, sections 408, 499, 500 and 502.

CHAPTER XXXVI.—Appointment of Receivers, section 503.

CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.

CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause (b), as relates to immoveable property.

CHAPTER XLVI.—Of Reference to and Revision by High Court.

CHAPTER XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

### THE THIRD SCHEDULE.

#### FORMS.

##### A.

[See section 54.]

*In the Small Cause Court for*

A. B. (Plaintiff),

*versus*

C. D. (Defendant).

A. B. of \_\_\_\_\_, in the town of \_\_\_\_\_, maketh oath [or affirms] and saith that C. D. \_\_\_\_\_, of \_\_\_\_\_, is justly indebted to \_\_\_\_\_ in the sum of Rs. \_\_\_\_\_ for arrears of rent of the house and premises No. \_\_\_\_\_, situated at \_\_\_\_\_, in the town of \_\_\_\_\_, due for \_\_\_\_\_ months, to wit from \_\_\_\_\_ to \_\_\_\_\_, at the rate of Rs. \_\_\_\_\_ per mensem.

Sworn [or affirmed] before me the \_\_\_\_\_ day of \_\_\_\_\_ 188 \_\_\_\_\_

*Judge [or Registrar.]*

##### B.

[See section 55.]

*In the Small Cause Court for*

#### FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C. D., on the house and premises situate at No. \_\_\_\_\_, in the town of \_\_\_\_\_, for the sum of \_\_\_\_\_ Rs. and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated \_\_\_\_\_ day of \_\_\_\_\_

*(Signed and sealed).*

To E. F., Bailiff and Appraiser.

##### C.

[See section 60.]

*In the Small Cause Court for*

#### FORM OF INVENTORY AND NOTICE.

*(State particulars of property seized).*

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of \_\_\_\_\_ Rs., being the amount of \_\_\_\_\_ months' rent due to A. B. at \_\_\_\_\_ last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the \_\_\_\_\_ day of \_\_\_\_\_ 188 \_\_\_\_\_

To C. D.

*(Signed) E. F.,  
Bailiff and Appraiser.*

## D.

[See section 65.]

*In the Small Cause Court for*

Take notice that we have appraised the moveable property seized on the \_\_\_\_\_ day of \_\_\_\_\_, under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which a notice and inventory were duly served upon you [or upon \_\_\_\_\_ on your behalf, as the case may be] under date the \_\_\_\_\_, and that the said property will be sold on the \_\_\_\_\_ [two clear days at least after the date of the notice] at \_\_\_\_\_ pursuant to the provisions of the said Act. Dated this \_\_\_\_\_ day of \_\_\_\_\_ 188—.

(Signed) E. F.

G. H.

Baillifs and Appraisers.

To C. D.

## E.

[See section 67.]

*In the Small Cause Court for*

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.				Affidavit and warrant to distrain.	Order to sell.	Commission.	Total.
Rs.	Rs.			Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1	and under 5	...	...	0 4 0	0 8 0	0 8 0	1 4 0
5	" 10	...	...	0 8 0	0 8 0	1 0 0	2 0 0
10	" 15	...	...	0 8 0	0 8 0	1 8 0	2 8 0
15	" 20	...	...	0 8 0	1 0 0	2 0 0	3 8 0
20	" 25	...	...	0 12 0	1 0 0	2 8 0	4 4 0
25	" 30	...	...	1 0 0	1 0 0	3 0 0	5 0 0
30	" 35	...	...	1 0 0	1 0 0	3 8 0	5 8 0
35	" 40	...	...	1 0 0	1 8 0	4 0 0	6 8 0
40	" 45	...	...	1 4 0	2 0 0	4 8 0	7 12 0
45	" 50	...	...	1 8 0	2 0 0	5 0 0	8 8 0
50	" 60	...	...	2 0 0	2 0 0	6 0 0	10 0 0
60	" 80	...	...	2 8 0	2 8 0	6 8 0	11 8 0
80	to 100	...	...	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100				3 0 0	3 0 0	7 per centum	...

The above scale is intended to include all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons were kept in charge of property distrained, four annas per day must be paid per man.

## THE FOURTH SCHEDULE.

(See section 73.)

## FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.			Fee for other processes.		
Rs.	Rs.	Rs.	A.	P.	Rs.	A.	P.
0	10	0	2	0	0	2	0
10	20	0	4	0	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	8	0	10	8	0
1,100	1,200	3	8	0	11	0	0
1,200	1,300	3	10	0	11	8	0
1,300	1,400	3	12	0	12	0	0
1,400	1,500	3	14	0	12	8	0
1,500	1,600	4	0	0	13	0	0
1,600	1,700	4	2	0	13	8	0
1,700	1,800	4	4	0	14	0	0
1,800	1,900	4	6	0	14	8	0
1,900	2,000	4	8	0	15	0	0

R. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.



# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 14, 1882.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th January, 1882, and was referred to a Select Committee:—

No. 1 of 1882.

*A Bill to provide for the levy of Rates on Land in the Central Provinces.*

WHEREAS it is expedient to provide in the territories administered by the Chief Commissioner of the Central Provinces for the levy on land of rates to be applied to local purposes; It is hereby enacted as follows:—

#### I.—Preliminary.

1. This Act may be called "The Central Provinces Local Rates Act, 1882":

It extends only to the territories administered by the Chief Commissioner of the Central Provinces:

And it shall come into force on such date as the Chief Commissioner, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette direct.

Commencement.

#### II.—Assessment.

2. When the term of settlement of any estate expires, such estate shall be liable to the payment of such rate, not exceeding five per cent. on its gross rental, as the Chief Commissioner, with the previous sanction of the Governor General in Council, from time to time imposes.

Such rate shall be paid by the landlord of such estate in addition to any land-revenue for the time being assessed thereon.

The officer assessing such rate on any estate shall determine what for the purposes of this section shall be deemed to be the gross rental of such estate; Provided that if the Chief Commissioner so directs, the gross rental of any estate shall for such purposes be deemed to be—

- (a) in cases in which the settlement of the land-revenue is liable to periodical revision, double the amount of the land-revenue for the time being assessed on such estate;
- (b) in cases in which the land-revenue has been wholly or in part released, double the amount which if the settlement were liable to such revision would be assessable as land-revenue on such estate.

3. The proceeds of all rates levied under this Act shall be carried to the credit of a general provincial fund.

4. The Chief Commissioner may, from time to time, allot from such fund such amounts as he thinks fit, to be applied for the benefit of each district for expenditure on all or any of the following purposes, namely:—

(a) The construction, repair and maintenance of roads and other means of communication:

(b) The construction and repair of school-houses, the maintenance and inspection of schools, the training of teachers and the establishment of scholarships:

(c) The maintenance of the rural police and district-post:

(d) The construction and repair of hospitals, dispensaries, lunatic asylums, markets, wells and tanks, the payment of all charges connected with the purposes for which such buildings or works have been constructed, and

(e) any other local works likely to promote the public health, comfort or convenience:

Provided that the amounts so allotted in any year for the benefit of any district shall not be less than nine-tenths of the total sum levied under this Act in such district for such year.



Sec. 12, Act  
III of 1878.

5. In the case of works which benefit more districts than one, the Chief Commissioner may determine what proportion of the expense of the work shall be borne by each of the districts benefited thereby; and such proportion shall be payable out of the allotments made as aforesaid for the benefit of such districts respectively.

Sec. 13, Act  
III of 1878,  
modified.

6. Any portion of such allotment remaining unexpended at the end of the year in which the allotment was made may, at the discretion of the Chief Commissioner, be re-allotted for expenditure for the benefit of the same district, or may be expended for all or any of the purposes mentioned in section four in such district as the Chief Commissioner directs.

Sec. 14, Act  
III of 1878,  
modified.

7. Accounts of the receipts in respect of all rates levied under this Act and of the receipts and expenditure of such allotment shall be kept in each district in such manner as the Chief Commissioner may from time to time direct.

8. The Chief Commissioner shall appoint in any district a Committee of not less than six persons for the purpose of determining how the allotment mentioned in section four shall be applied, and for the supervision and control of the expenditure of such allotment.

Not less than one-half of the members of such Committee shall be persons not in the service of Government, who own or occupy land in such district and reside therein.

### III.—Miscellaneous.

9. In all matters connected with the assessment and collection of any rate leviable under this Act, an appeal shall lie to the Commissioner from the order of the officer assessing or collecting such rate.

The Commissioner's decision on such appeal shall be final; but may be reviewed by the Chief Commissioner.

10. No appeal shall lie after the expiration of ninety days from the date of the order complained of; and in computing such period of limitation the provisions of the Indian Limitation Act, 1877, shall apply.

Sec. 19, Act  
III of 1878.

11. All sums due on account of any rate imposed under this Act shall be recoverable as if they were arrears of land-revenue payable directly to Government and due on the land on which the rate is payable.

12. All cesses which before this Act comes into force have been imposed on land for the maintenance of roads, schools or the district-post and which are now payable, shall be deemed to be rates imposed hereunder.

13. The Chief Commissioner may, by notification in the official Gazette, from time to time—

(a) prescribe by what instalments and at what times rates imposed hereunder shall be payable, and by whom they shall be respectively assessed, collected and paid;

(b) prescribe the manner in which the members of any Committee under section eight shall be appointed or removed, and define consistently with this Act the functions and authority of such Committee;

(c) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement; and

(d) exempt any portion of the territories under his administration from the operation of this Act; or exempt any land from liability to pay the whole or any part of any rate under this Act; and vary or cancel such exemptions.

### STATEMENT OF OBJECTS AND REASONS.

In the Central Provinces Land-revenue Bill provision was made for the levy of rates on land in the Central Provinces. The Select Committee, however, were of opinion that it was not expedient to make such a provision in an enactment relating to the assessment and collection of land-revenue, and that it was better to dissociate the local rates from land-revenue, and to provide for their assessment by a separate enactment.

2. The present Bill has accordingly been prepared on the lines of the North-Western Provinces Local Rates Act, 1878. It provides for the assessment and collection of local rates on land in the Central Provinces, and for the expenditure of the receipts from those rates on works of public utility in those Provinces. No change is made by the Bill in the rates at present payable by the owners of land. Such rates are maintained and made leviable under the Bill, but they cannot be altered until the period of the existing settlement expires.

C. H. T. CROSTHWAITE.

The 29th December, 1881.

R. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th January, 1882 :—

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns was referred, have the honour to report that we have considered the Bill No. II and the papers noted in the margin, and to submit this our report.

Minute by the Hon'ble Sir R. Garth, Chief Justice, High Court, Calcutta, dated 8th May, 1881 [Papers No. 9].  
 Extract from Note from the Hon'ble Sir R. Garth, Chief Justice, High Court, Calcutta, to Hon'ble Whitley Stokes [Papers No. 9].  
 From Chief Secretary to Government, Madras, No. 1283, dated 29th June, 1881, and enclosures [Papers No. 10].  
 „ Under-Secretary to Government, Bombay, No. 3540, dated 7th June, 1881, and enclosure [Papers No. 11].  
 „ Officiating Registrar, High Court, Calcutta, No. 1508, dated 11th July, 1881, and enclosure [Papers No. 12].  
 „ Shammurav Vithal, Secretary, Vakils' Association, Western India, dated 25th June, 1881 [Paper No. 13].  
 „ Mr. B. R. Kotewal, Bombay, No. 98, dated 7th September, 1881, and enclosure [Papers No. 14].  
 „ Under-Secretary to Government, Bombay, No. 5189, dated 8th August, 1881, and enclosures [Papers No. 15].  
 „ Under-Secretary to Government, Bombay, No. 6016, dated 13th September, 1881 [Papers No. 16].  
 „ Under-Secretary to Government, Bombay, No. 6146, dated 19th September, 1881, and enclosures [Papers No. 16].  
 „ Secretary to Government, Bengal, No. 3368J., dated 20th August, 1881, and enclosures [Papers No. 17].  
 „ Chief Secretary to Government, Madras, No. 2524, dated 9th December, 1881, and enclosures [Papers No. 18].

the Act comes into force.

3. In section 9, we have given the Small Cause Court power, with the previous sanction of the High Court, to make rules providing for all matters not specially provided for by the Act.

4. It has been represented that petty claims in respect of collisions occurring in the harbour are brought in the Bombay Small Cause Court, and that it will cause inconvenience to the public if the jurisdiction of the Court in such cases is held to be excluded by section 19, clause (m). We have therefore made that clause run thus :—“ Suits for compensation in respect of collisions on the high seas.”

5. It is, we think, inexpedient to permit a defendant to oust the jurisdiction of the Small Cause Court by raising questions as to religious rites or ceremonies, and we have therefore omitted clause (f) of section 9 of the Bill as re-published.

6. The provisions of section 23 of the Bill, which extend certain portions of the Code of Civil Procedure to the Small Cause Courts, have been generally objected to. It is said that the procedure thus applied will cause delay in the trial of suits and defeat the object for which those Courts are established. We consider that the procedure prescribed in the section is not requisite in suits for an amount or value not exceeding one thousand rupees, but that it is expedient that it should be followed in suits for a greater amount or value. We have therefore added a clause giving the Court power, subject to the control of the Local Government, to declare that, in the case of suits for an amount or value not exceeding one thousand rupees, the whole or any part of that procedure shall not extend and be applied to the Small Cause Court, or that it shall extend and be applied with such modifications as the Court, subject to such control, may think fit. We have also omitted Chapter X of the Code of Civil Procedure (Discovery and Admission of Documents) from the second schedule, as its provisions do not appear to us to be suitable for a Small Cause Court.

7. We have also modified section 24, which declares what shall be deemed to be a *res judicata*. We have limited the application of the section to Courts other than the Small Cause Court, and have omitted the illustrations.

8. Section 28 of the Bill as re-published, which bars applications for the execution of decrees if presented after three years from the date of the decree, contained the rule in force in the

Calcutta Small Cause Court. We consider that a special enactment on this subject is unnecessary and we have accordingly omitted the section, and left the period of limitation in the case of such applications to be determined by the Indian Limitation Act, 1877.

9. It is objected that the provisions of section 40 of the Bill as re-published (now section 39), which allow an application for re-hearing to be made to the High Court, will deprive the decisions of the Small Cause Court of their finality, and give rise to increased litigation and expense. We think that in the case of suits for an amount or value exceeding one thousand rupees the judgment of the Small Cause Court should not be absolutely final. There should be no appeal in such cases, but the parties should have the power, on certain conditions, of obtaining a re-hearing. In suits for a lesser amount, we think the judgment should be final as it is at present, and we have therefore amended the section so as to permit applications under it to be made only in suits for an amount or value exceeding one thousand rupees.

10. We think that it will be convenient to have all the law peculiar to the Presidency Small Cause Courts within the compass of a single enactment, and we have therefore repealed the Distress Act, 1875, and re-enacted it with such amendments as seemed necessary to make it harmonize with the rest of the measure.

11. Section 72 of the Bill as re-published (now section 90) prohibited attorneys of the High Court from addressing the Court or examining witnesses in suits for an amount or value exceeding one thousand rupees. This prohibition has been very generally objected to and we have withdrawn it. At the same time we see no reason for giving this privilege to pleaders of the Small Cause Court. The Small Cause Court never had jurisdiction in such suits before, and the pleaders consequently never have had the privilege of addressing a Court in cases of such importance.

12. The Bill has been duly published, and we consider that the amendments now made are of sufficient importance to require its re-publication. We have accordingly altered the date of its commencement from the first of January, 1882, to the first of March, 1882, and recommend that it now be re-published.

W. STOKES.

J. GIBBS.

JOTINDRA MOHAN TAGORE.

I agree that the amendments and changes made by the Select Committee are improvements, and I agree that the Bill should be re-published, but I am not prepared to vote for its being passed.

G. H. P. EVANS.

*The 28th December, 1881.*

### No. III. THE PRESIDENCY SMALL CAUSE COURTS BILL, 1882.

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## No. III.

*A Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.*

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called "The Presidency Small Cause Courts Act, 1882"; and it shall come into force on the first day of March, 1882.

But nothing herein contained shall affect the provisions of the Army Act, 1881, section 151, or the rights or liabilities of any person under any decree passed before that date.

2. On and from the day on which this Act comes into force the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted, appointments made and securities given under any of the said enactments shall, as far as may be, be deemed to have

been respectively constituted, made and given under this Act.

All references to any enactment hereby repealed made in Acts passed prior to the day on which this Act comes into force shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

3. In Act No. XXIII of 1850 (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures "Act VII. 1847," the words and figures "The Presidency Small Cause Courts Act, 1882, Chapter VIII," shall be substituted; the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners" the words "the Judges of the Court of Small Causes at Calcutta," shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures "chapter XXXIX," the words and figures "and by the Presidency Small Cause Courts Act, 1882," shall be inserted.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

## CHAPTER II.

## CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts. The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

All barristers who when this Act comes into force are, or are acting as, Judges of the Small Cause Court shall, for the purposes of this sec-

tion, be deemed to be advocates of a High Court.

XXVI Rank and precedence of Judges. 8. The Chief Judge shall be the first of the Judges in rank and precedence.

VII of 119. 6. The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

VII of 119. IX of 23. 9. Except as otherwise provided by this Act, or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for all matters not specially provided for by this Act, and for the exercise by one or more of its Judges of any powers conferred on the Small Cause Court by this Act or by any other law for the time being in force.

VI of 14. 10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

of 0(b). I of 4. 12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court; and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

of 1. Powers and duties of such officers. The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature as the Chief Judge may, from time to time, by rule, direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to

the file of the Registrar any suit which the latter is competent to try.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature.

### CHAPTER III.

#### LAW ADMINISTERED BY THE COURT.

16. All questions other than questions relating to procedure or practice which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

### CHAPTER IV.

#### JURISDICTION IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—when the amount or value of the subject-matter does not exceed two thousand rupees: c. 106, s. 24. and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain within such local limits; or

(c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

*Explanation I.*—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

*Explanation II.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation III.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Act IX of  
1850, s. 25.

Suits in which Court  
has no jurisdiction.

19. The Small Cause Court  
shall have no jurisdiction  
in—

Act 5 Bom. H.  
C. Rep. (O.  
C. J.) 1.

(a) suits concerning the assessment or collection of the revenue;

(b) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

Act X of  
1877, s. 16.  
s. (a) to (d).

(d) suits for the recovery of immoveable property;

(e) suits for the partition of immoveable property;

(f) suits for the foreclosure or redemption of a mortgage of immoveable property;

(g) suits for the determination of any other right to or interest in immoveable property;

(h) suits for the specific performance or rescission of contracts;

(i) suits to obtain an injunction;

(j) suits for the cancellation or rectification of instruments;

(k) suits to enforce a trust;

(l) suits for a general average loss and suits on policies of insurance on sea-going vessels;

(m) suits for compensation in respect of collisions on the high seas;

(n) suits for compensation for the infringement of a patent, copyright or trademark;

(o) suits for a dissolution of partnership or for an account of partnership-transactions;

(p) suits for an account of property and its due administration under the decree of the Court;

(q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(r) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(s) suits for declaratory decrees;

(t) suits for possession of a hereditary office;

(u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

19 & 20 Vic.,  
s. 108, s. 27.

(v) suits on any judgment of a High Court;

(w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

20. When the parties to a suit which, if the Act XX  
1854, s. 2

Court may by consent  
try suits beyond pecu-  
niary limits of jurisdic-  
tion.

amount or value of the sub-  
ject-matter thereof did not  
exceed two thousand rupees,  
would be cognizable by the

Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. All suits to which an officer of the Small Cause Court is, as such, Act IX  
1850, s. 1

Suits by and against  
officers of Court.

party, except suits in respect  
of property taken in execu-  
tion of its process, or the proceeds or value

thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

22. If any suit cognizable by the Small Cause Act IX of  
1850, s. 1  
Act XIV  
1864, s. 1

Costs when plaintiff  
sues in High Court in  
other cases cognizable by  
Small Cause Court.

Court, other than a suit to  
which section twenty-one  
applies, is instituted in the

High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

## CHAPTER V.

### PROCEDURE IN SUITS.

23. The portions of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act.

Provided that, in the case of all or any suits for an amount or value not exceeding one thousand rupees, the Court may, subject to the control of the Local Government, from time to time, by notification in the official Gazette, declare that any of the said portions of the said Code shall not extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications as the Court, subject to the control aforesaid, may think fit.



**24.** Notwithstanding anything contained in section 13 of the Code of Civil Procedure, no decision passed under the provisions of this Act shall in any Court other than the Small Cause Court be conclusive as to anything except the right at the time of such decision to the relief granted thereby, or the absence of a right at such time to any relief claimed by the plaintiff and withheld by such decision.

**25.** Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

**26.** When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same:

Provided that a document may be returned at any time before any of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original: Provided also that no document shall be returned which by force of the decree has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

**27.** In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

**28.** Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to

such officer the judgment-debtor or the property to be attached, as the case may be.

**29.** When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

**30.** Whenever any judgment-debtor, who has been arrested in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged.

**31.** Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness or other sufficient cause, to pay the amount of the decree, or if such Court has ordered the same to be paid in instalments; the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree or make such order as it thinks fit.

**32.** If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—to the High Court;

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

**33.** Notwithstanding anything contained in the Code of Civil Procedure, a minor may sue in certain cases as if of full age, and a minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

**34.** Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by

a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

**35.** The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

**36.** The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

**37.** Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

## CHAPTER VI.

### NEW TRIALS AND RE-HEARING.

**38.** Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive; but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure) order a new trial to be held upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

**39.** Any party may, within eight days after the judgment in any suit in which the amount, or value of the subject-matter exceeds one thousand rupees, apply to the High Court for an order that such suit may be re-heard.

Such application shall be supported by affidavits, and, in case the applicant has appeared by advocate, vakil or attorney, by a certificate from the leading counsel at the hearing that in his opinion there are good grounds for re-hearing the suit, and if, on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure, relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

**40.** On the day fixed under section thirty-nine or on any other day to which the hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree or order under this section.

**41.** Every decree or order made by any High Court upon any such re-hearing may either be executed by such High Court in the same manner as other decrees or orders of such Court or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

## CHAPTER VII.

### RECOVERY OF POSSESSION OF IMMOVABLE PROPERTY.

**42.** When any person has had possession of any immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of, another person, or of some person through whom such other person claims, and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person, such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

**43.** The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

**44.** If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-two, be entitled to an order addressed to

a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

*Explanation.*—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

IX of  
a. 93. 45. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against

IX of  
a. 95. Bar to proceedings against Judge or officer for issuing, &c., order or summons. any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

IX of  
a. 96. 46. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any

error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a

Occupant may sue for compensation. suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

IX of  
a. 97. 47. Nothing herein contained shall be deemed Liability of applicant obtaining order when not entitled. to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

IX of  
a. 97. And when the applicant was not, at the time Application for order of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

48. Whenever on an application being made under section forty-two the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

Stay of proceedings of occupant giving security to bring a suit against the applicant.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-four.

Nothing contained in section twenty-two shall apply to suits under this section.

49. In all proceedings under this chapter, the New.

Proceedings to be regulated by the Code of Civil Procedure. Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

50. Recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

Recovery of possession no bar to suit to try title.

## CHAPTER VIII.

### DISTRESSES.

51. This chapter extends to every place within the local extent of the local limits of the ordinary original civil jurisdictions of the High Courts of judicature at Fort William, Madras and Bombay. But nothing contained in this chapter applies—

- (a) to any rent due to Government;
- (b) to any rent which has been due for more than twelve months before the application mentioned in section fifty-four.

52. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this chapter, and may from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

Appointment of bailiffs and appraisers.

Act I of 1875, a. 4.

53. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

Security to be given by appointees.

Act I of 1875, a. 5.

54. Any person claiming to be entitled to arrears of rent of any house or premises to which this chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as hereinafter mentioned.

Application for distress-warrant.

Act I of 1875, a. 6.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

Act I of 1875, s. 8. **55.** The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form contained in the same schedule (marked B) addressed to any one of such bailiffs.

The Judge may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

Act I of 1875, s. 8. **56.** Every distress under this chapter shall be made after sunrise and before sunset, and not at any other time.

Act I of 1875, s. 9. **57.** The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter:

Provided that he shall not enter or break open the door of any room appropriated for the *zanâna* or residence of women, which by the usage of the country is considered private.

Act I of 1875, s. 10. **58.** In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may in the bailiff's judgment be sufficient to cover the amount of the said rent, together with the costs of the said distress:

Provided that the bailiff shall not seize—

- (a) things in actual use; or
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or
- (c) the debtor's necessary wearing apparel; or
- (d) goods in the custody of the law.

Act I of 1875, s. 11. **59.** The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Act I of 1875, s. 12. **60.** On seizing any property under section fifty-eight the bailiff shall make an inventory of such property, and shall give a notice in writing to the effect of the form in the third schedule hereto annexed (marked C) to the debtor, or to any other person upon his behalf in or upon the said house or premises.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice to be filed.

Act I of 1875, s. 13. **61.** The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly

constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just, and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

Act I of 1875, s. 14. **62.** If any claim be made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

Act I of 1875, s. 15. **63.** In any case under section sixty-one or section sixty-two the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit, and may for that purpose make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit in respect of injury caused by the distress.

Act I of 1875, s. 16. **64.** In any application under section sixty-one or any claim under section sixty-two, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment



of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit in respect of injury caused by the distress which gave rise to the case wherein such order was made.

1875. 65. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and

give the debtor notice in writing to the effect of the form in the third schedule hereto annexed (marked D).

The bailiffs shall file in the same Court a copy of every notice given under this section.

1875. 66. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall on realizing the proceeds pay over the amount thereof to the Registrar of the Small Cause Court, and such amount shall be

applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor:

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

1875. 67. No costs of any distress under this chapter shall be taken or demanded except those mentioned in the part of the third schedule hereto annexed (marked E).

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

1875. 68. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under

this Act, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses shall be duly entered.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

1875. 69. No distress shall be levied for arrears of rent, except under the provisions of this chapter;

And any person, except a bailiff appointed under section fifty-two, levying or attempting to levy any such distress shall, on conviction before a Presidency Magistrate, be liable to be

punished by fine which may extend to five hundred rupees and imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

## CHAPTER IX.

### REFERENCES TO HIGH COURT.

70. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

71. When judgment is given under section seventy contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment.

## CHAPTER X.

### FEEs AND COSTs.

72. A fee not exceeding—  
(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section thirty-nine or section forty-two; and no such plaint or application shall be received until such fee has been paid.

A fee of ten rupees shall be paid on the filing of every agreement under Chapter XXXVIII of the Code of Civil Procedure.

73. The fees specified in the third and fourth columns of the fourth Schedule hereto annexed shall be

paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

Act IX of  
1850, s. 20.

**74.** Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Act IX of  
1850, s. 20.

**75.** The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-two made, by poor persons, and may issue processes on behalf of such persons, without payment of the fees mentioned in sections seventy-two and seventy-three, or on a part-payment of such fees.

Act IX of  
1850, s. 20.

**76.** The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections seventy-two and seventy-three:

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Act XXVI of  
1864, s. 13.

**77.** The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

**78.** Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870, saved.

#### CHAPTER XI.

##### MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

Act XVII of  
1875, s. 70:  
Act XVII of  
1877, s. 86:  
Act IX of  
1850, s. 80.

**79.** The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Act IX of  
1850, s. 85.

**80.** If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or

warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

**81.** If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or default of officers. Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

**82.** For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

**83.** Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

#### CHAPTER XII.

##### CONTEMPT OF COURT.

**84.** When any such offence as is described in section 175, 178, 179, 180 or 228 of the Indian Penal Code is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to one month unless such fine is sooner paid.

**85.** In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

**86.** If the Court considers that a person accused of any offence referred to in section eighty-four and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section eighty-four, the Court, after recording the facts constituting the offence and the statement of the accused as

hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

**87.** When the Court has, under section eighty-four or section eighty-six, sentenced an offender to punishment, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

**88.** If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section eighty-four or eighty-six.

**89.** Any person deeming himself aggrieved by an order under section eighty-four or section eighty-eight may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

### CHAPTER XIII.

#### MISCELLANEOUS.

**90.** No person other than an advocate, vakil or attorney of the High Court, or a person who is at the time this Act comes into force a pleader of the Small Cause Court, shall appear, plead or act in any suit or proceeding in the Small Cause Court under this Act, and no person other than—

(a) an advocate of the High Court instructed by a vakil or attorney of such Court or by a pleader of the Small Cause Court, or  
(b) a vakil or attorney of the High Court, shall address the Court or examine witnesses at the hearing of any such suit in which the amount or value of the subject-matter exceeds one thousand rupees.

Nothing in this section shall affect the right of any party to conduct his own case or that of any

other party to the suit, or the right of any recognized agent of a party under the Code of Civil Procedure as applied by this Act.

**91.** Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

**92.** The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

**93.** The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

**94.** The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

**95.** The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

**96.** No suit shall lie on any decree of the Small Cause Court.

**97.** Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

**98.** If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

**99.** All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

## THE FIRST SCHEDULE.

(See section 2.)

## ENACTMENTS REPEALED.

## A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort Williams.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

## B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850.	The whole.
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
I of 1875 ...	To regulate Distresses for Rents in the Presidency-towns.	The whole.
I of 1877 ...	The Code of Civil Procedure.	Section eight, para. 2.

## C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

## THE SECOND SCHEDULE.

(See section 28.)

## PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

## PRELIMINARY: Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

## CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24 and section 25, paragraphs 2 and 3.

## CHAPTER III.—Of Parties and their Appearances, Applications and Acts, except section 37, clause (b), and the last paragraph.

## CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.

## CHAPTER V.—Of the Institution of Suits, except section 53, clause (e), section 55, section 57, clause (b), and sections 58 and 62.

## CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66 and 66.

## CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

## CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.

## CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

## CHAPTER XI.—Settlement of issues, sections 150 and 151.

## CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.

## CHAPTER XIII.—Of Adjournments.

## CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

## CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

## CHAPTER XVI.—Of Affidavits.

## CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207 and 211 to 215 (both inclusive).

## CHAPTER XVIII.—Of Costs.

## CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

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## CHAPTER XXIII.—Of Payment into Court.

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- CHAPTER XXV.—Of Commissions, except section 396.
- CHAPTER XXVII.—Suits by or against Government, or public officers.
- CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.
- CHAPTER XXIX.—Suits by and against Corporations and Companies.
- CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.
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- CHAPTER XXXII.—Suits by and against Military Men.
- CHAPTER XXXIII.—Interpleader.
- CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of immoveable property.
- CHAPTER XXXV.—Interlocutory orders, sections 498, 499, 500 and 502.
- CHAPTER XXXVI.—Appointment of Receivers, section 503.
- CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.
- CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause (b), as relates to immoveable property.
- CHAPTER XLVI.—Of Reference to and Revision by High Court.
- CHAPTER XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

## THE THIRD SCHEDULE.

## FORMS.

## A.

[See section 54.]

*In the Small Cause Court for*

A. B. (Plaintiff),

*versus*

C. D. (Defendant).

A. B. of \_\_\_\_\_, in the town of \_\_\_\_\_, maketh oath [or affirms] and saith that C. D. of \_\_\_\_\_, is justly indebted to \_\_\_\_\_ in the sum of Rs. \_\_\_\_\_ for arrears of rent of the house and premises No. \_\_\_\_\_, situated at \_\_\_\_\_, in the town of \_\_\_\_\_, due for \_\_\_\_\_ months, to wit from \_\_\_\_\_ to \_\_\_\_\_, at the rate of Rs. \_\_\_\_\_ per mensem.

Sworn [or affirmed] before me the \_\_\_\_\_ day of \_\_\_\_\_ 188 \_\_\_\_\_.

Judge [or Registrar.]

## B.

[See section 55.]

*In the Small Cause Court for*

## FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C. D., on the house and premises situate at No. \_\_\_\_\_, in the town of \_\_\_\_\_, for the sum of \_\_\_\_\_ Rs. and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated \_\_\_\_\_ day of \_\_\_\_\_.

(Signed and sealed).

To E. F., Bailiff and Appraiser.

## C.

[See section 60.]

*In the Small Cause Court for*

## FORM OF INVENTORY AND NOTICE.

(State particulars of property seized).

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of \_\_\_\_\_ Rs., being the amount of \_\_\_\_\_ months' rent due to A. B. at \_\_\_\_\_ last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the \_\_\_\_\_ day of \_\_\_\_\_ 188 \_\_\_\_\_.

To C. D.

(Signed) E. F.  
Bailiff and Appraiser.

D.

[ See section 63. ]

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the \_\_\_\_\_ day of \_\_\_\_\_ under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which a notice and inventory were duly served upon you or upon \_\_\_\_\_ on your behalf, as the case may be, under date the \_\_\_\_\_ [two clear days at least after the date of the notice] at \_\_\_\_\_ and that the said property will be sold on the \_\_\_\_\_ pursuant to the provisions of the said Act. Dated this \_\_\_\_\_ day of \_\_\_\_\_ 188—.

(Signed) E. F.

G. H.

Bailiffs and Appraisers.

To C. D.

E.

[ See section 67. ]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.		Affidavit and warrant to distrain.	Order to sell.	Commission.	Total.
Rs.	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1 and under 5	...	0 4 0	0 8 0	0 8 0	1 4 0
5	10	0 8 0	0 8 0	1 0 0	2 0 0
10	15	0 8 0	0 8 0	1 8 0	2 8 0
15	20	0 8 0	1 0 0	2 0 0	3 8 0
20	25	1 0 0	1 0 0	2 8 0	4 4 0
25	30	1 0 0	1 0 0	3 0 0	5 0 0
30	35	1 0 0	1 8 0	3 8 0	5 8 0
35	40	1 4 0	2 0 0	4 0 0	6 8 0
40	45	1 8 0	2 0 0	4 8 0	7 12 0
45	50	2 0 0	2 0 0	5 0 0	8 8 0
50	60	2 8 0	2 8 0	6 0 0	10 0 0
60	80	3 0 0	3 0 0	6 8 0	11 8 0
80	100	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100	...	...	...	7 per centum	...

The above scale is intended to include all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where pawns were kept in charge of property distrained, four annas per day must be paid per man.

## THE FOURTH SCHEDULE.

(See section 73.)

## FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

R. J. CROSTHWATE,

Offg. Secy. to the Govt. of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[ First publication. ]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th January, 1882, and was referred to a Select Committee:—

## No. 2 OF 1882.

*A Bill to exempt certain vessels from the Indian Ports Act, 1875, section 38.*

WHEREAS it is enacted by the Indian Ports Act, 1875, section thirty-eight, that no vessel of the burden of two hundred tons or upwards shall be moved in any port to which the said section has been specially extended without having a Pilot, Harbour-master or Assistant of the Master Attendant or Harbour-master on board; and that no vessel of any burden less than two hundred tons and exceeding one hundred tons shall be moved in any such port without having on board a Pilot, Harbour-master or Assistant of the Master Attendant or Harbour-master, unless authority in writing so to do has been obtained from the Conservator or some officer empowered by him to give such authority;

And whereas the said recited section has been specially extended to the Port of Bombay;

and whereas it is expedient to exempt Native vessels when moved in the said Port from the

provisions of the said recited section; It is hereby enacted as follows:—

Addition to section 38 of Act XII of 1875.

1. To the said section the following shall be added:—

“Nothing in this section shall be deemed to apply to Native vessels in the Port of Bombay exempted from the provisions of the section when they are moved in the Port of Bombay.”

“If any question arises as to whether any vessel is a Native vessel within the meaning of this section, the decision thereon of such authority as the Governor of Bombay in Council may from time to time appoint in this behalf shall be conclusive.”

Act of 1881, para. 2.

## STATEMENT OF OBJECTS AND REASONS.

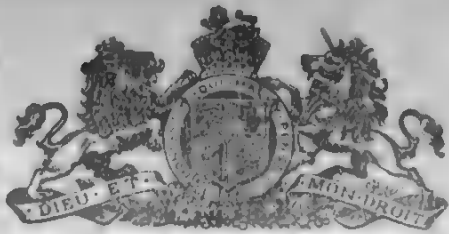
Section 38 of the Indian Ports Act, 1875, which has been extended to the Port of Bombay, provides that no vessel of the burden of one hundred tons or upwards shall be moved in port without having a Pilot, Harbour-master or other officer on board. The Trustees of the Port and the Government of Bombay are of opinion that the pilotage of Native vessels in that port is both undesirable and impossible; and the Government of India has therefore decided to legislate so as to exempt such vessels, when moved in the Port of Bombay, from the prohibition contained in section 38 of the Indian Ports Act, 1875. With this object the present Bill has been prepared.

WHITLEY STOKES.

*The 31st December, 1881.*

R. J. CROSTHWAITE,

*Offy. Secy. to the Govt. of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 21, 1882.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th January, 1882, and was referred to a Select Committee:—

#### No. 1 of 1882.

*A Bill to provide for the levy of Rates on Land in the Central Provinces.*

WHEREAS it is expedient to provide in the territories administered by the Chief Commissioner of the Central Provinces for the levy on land of rates to be applied to local purposes; It is hereby enacted as follows:—

#### I.—Preliminary.

1. This Act may be called "The Central Provinces Local Rates Act, 1882":

It extends only to the territories administered by the Chief Commissioner of the Central Provinces:

And it shall come into force on such date as the Chief Commissioner, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette direct.

#### II.—Assessment.

2. When the term of settlement of any estate expires, such estate shall be liable to the payment of such rate, not exceeding five per cent. on its gross rental, as the Chief Commissioner, with the previous sanction of the Governor General in Council, from time to time imposes.

Such rate shall be paid by the landlord of such estate in addition to any land-revenue for the time being assessed thereon.

The officer assessing such rate on any estate shall determine what for the purposes of this section shall be deemed to be the gross rental of such estate; Provided that if the Chief Commissioner so directs, the gross rental of any estate shall for such purposes be deemed to be—

- (a) in cases in which the settlement of the land-revenue is liable to periodical revision, double the amount of the land-revenue for the time being assessed on such estate;
- (b) in cases in which the land-revenue has been wholly or in part released, double the amount which if the settlement were liable to such revision would be assessable as land-revenue on such estate.

3. The proceeds of all rates levied under this Act shall be carried to the credit of a general provincial fund.

4. The Chief Commissioner may, from time to time, allot from such fund such amounts as he thinks fit, to be applied for the benefit of each district for expenditure on all or any of the following purposes, namely:—

(a) The construction, repair and maintenance of roads and other means of communication:

(b) The construction and repair of school-houses, the maintenance and inspection of schools, the training of teachers and the establishment of scholarships:

(c) The maintenance of the rural police and district-post:

(d) The construction and repair of hospitals, dispensaries, lunatic asylums, markets, wells and tanks, the payment of all charges connected with the purposes for which such buildings or works have been constructed, and

(e) any other local works likely to promote the public health, comfort or convenience:

Provided that the amounts so allotted in any year for the benefit of any district shall not be less than nine-tenths of the total sum levied under this Act in such district for such year.



Sec. 12, Act  
III of 1878.

5. In the case of works which benefit more districts than one, the Chief Commissioner may determine what proportion of the expense of the work shall be borne by each of the districts benefited thereby; and such proportion shall be payable out of the allotments made as aforesaid for the benefit of such districts respectively.

Sec. 13, Act  
III of 1878,  
modified.

6. Any portion of such allotment remaining unexpended at the end of the year in which the allotment was made may, at the discretion of the Chief Commissioner, be re-allotted for expenditure for the benefit of the same district, or may be expended for all or any of the purposes mentioned in section four in such district as the Chief Commissioner directs.

Sec. 14, Act  
III of 1878,  
modified.

7. Accounts of the receipts in respect of all rates levied under this Act and of the receipts and expenditure of such allotment shall be kept in each district in such manner as the Chief Commissioner may from time to time direct.

8. The Chief Commissioner shall appoint in any district a Committee of not less than six persons for the purpose of determining how the allotment mentioned in section four shall be applied, and for the supervision and control of the expenditure of such allotment.

Not less than one-half of the members of such Committee shall be persons not in the service of Government, who own or occupy land in such district and reside therein.

### III.—Miscellaneous.

9. In all matters connected with the assessment and collection of any rate leviable under this Act, an appeal shall lie to the Commissioner from the order of the officer assessing or collecting such rate.

The Commissioner's decision on such appeal shall be final; but may be reviewed by the Chief Commissioner.

10. No appeal shall lie after the expiration of ninety days from the date of the order complained of; and in computing such period of limitation the provisions of the Indian Limitation Act, 1877, shall apply.

Sec. 18, Act  
III of 1878.

11. All sums due on account of any rate imposed under this Act shall be recoverable as if they were arrears of land-revenue payable directly to Government and due on the land on which the rate is payable.

12. All cesses which before this Act comes into force have been imposed on land for the maintenance of roads, schools or the district-post and which are now payable, shall be deemed to be rates imposed hereunder.

13. The Chief Commissioner may, by notification in the official Gazette, from time to time—

(a) prescribe by what instalments and at what times rates imposed hereunder shall be payable, and by whom they shall be respectively assessed, collected and paid;

(b) prescribe the manner in which the members of any Committee under section eight shall be appointed or removed, and define consistently with this Act the functions and authority of such Committee;

(c) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement; and

(d) exempt any portion of the territories under his administration from the operation of this Act; or exempt any land from liability to pay the whole or any part of any rate under this Act; and vary or cancel such exemptions.

### STATEMENT OF OBJECTS AND REASONS.

In the Central Provinces Land-revenue Bill provision was made for the levy of rates on land in the Central Provinces. The Select Committee, however, were of opinion that it was not expedient to make such a provision in an enactment relating to the assessment and collection of land-revenue, and that it was better to dissociate the local rates from land-revenue, and to provide for their assessment by a separate enactment.

2. The present Bill has accordingly been prepared on the lines of the North-Western Provinces Local Rates Act, 1878. It provides for the assessment and collection of local rates on land in the Central Provinces, and for the expenditure of the receipts from those rates on works of public utility in those Provinces. No change is made by the Bill in the rates at present payable by the owners of land. Such rates are maintained and made leviable under the Bill, but they cannot be altered until the period of the existing settlement expires.

C. H. T. CROSTHWAITE.

The 29th December, 1881.

R. J. CROSTHWAITE,  
Offg. Secy. to the Govt. of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th January, 1892:—

We, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns was referred, have the honour to report that we have considered the Bill No. II and the papers noted in the margin, and to submit this our report.

2. To the saving clause of section 1 of the Bill, we have added a provision that the Act shall not affect the rights or liabilities of any person under any decree passed before

the Act comes into force.

3. In section 9, we have given the Small Cause Court power, with the previous sanction of the High Court, to make rules providing for all matters not specially provided for by the Act.

4. It has been represented that petty claims in respect of collisions occurring in the harbour are brought in the Bombay Small Cause Court, and that it will cause inconvenience to the public if the jurisdiction of the Court in such cases is held to be excluded by section 19, clause (a). We have therefore made that clause run thus:—"Suits for compensation in respect of collisions on the high seas."

5. It is, we think, inexpedient to permit a defendant to oust the jurisdiction of the Small Cause Court by raising questions as to religious rites or ceremonies, and we have therefore omitted clause (d) of section 9 of the Bill as re-published.

6. The provisions of section 23 of the Bill, which extend certain portions of the Code of Civil Procedure to the Small Cause Courts, have been generally objected to. It is said that the procedure thus applied will cause delay in the trial of suits and defeat the object for which those Courts are established. We consider that the procedure prescribed in the section is not requisite in suits for an amount or value not exceeding one thousand rupees, but that it is expedient that it should be followed in suits for a greater amount or value. We have therefore added a clause giving the Court power, subject to the control of the Local Government, to declare that, in the case of suits for an amount or value not exceeding one thousand rupees, the whole or any part of that procedure shall not extend and be applied to the Small Cause Court, or that it shall extend and be applied with such modifications as the Court, subject to such control, may think fit. We have also omitted Chapter X of the Code of Civil Procedure (Discovery and Admission of Documents) from the second schedule, as its provisions do not appear to us to be suitable for a Small Cause Court.

7. We have also modified section 24, which declares what shall be deemed to be a *res judicata*. We have limited the application of the section to Courts other than the Small Cause Court, and have omitted the illustrations.

8. Section 28 of the Bill as re-published, which bars applications for the execution of decrees if presented after three years from the date of the decree, contained the rule in force in the

Minute by the Hon'ble Sir R. Garth, Chief Justice, High Court, Calcutta, dated 8th May, 1891 [Papers No. 9].

Extract from Note from the Hon'ble Sir R. Garth, Chief Justice, High Court, Calcutta, to Hon'ble Whitley Stokes [Papers No. 9].

From Chief Secretary to Government, Madras, No. 1233, dated 29th June, 1891, and enclosures [Papers No. 10].

" Under-Secretary to Government, Bombay, No. 8540, dated 7th June, 1891, and enclosure [Papers No. 11].

" Officiating Registrar, High Court, Calcutta, No. 1608, dated 11th July, 1891, and enclosure [Papers No. 12].

" Shamurav Vithal, Secretary, Vakils' Association, Western India, dated 25th June, 1891 [Paper No. 13].

" Mr. B. R. Kotewal, Bombay, No. 98, dated 7th September, 1891, and enclosure [Papers No. 14].

" Under-Secretary to Government, Bombay, No. 5189, dated 8th August, 1891, and enclosures [Papers No. 15].

" Under-Secretary to Government, Bombay, No. 6016, dated 13th September, 1891 [Papers No. 15].

" Under-Secretary to Government, Bombay, No. 6146, dated 19th September, 1891, and enclosures [Papers No. 16].

" Secretary to Government, Bengal, No. 3268J., dated 20th August, 1891, and enclosures [Papers No. 17].

" Chief Secretary to Government, Madras, No. 2524, dated 9th December, 1891, and enclosures [Papers No. 1].

Calcutta Small Cause Court. We consider that a special enactment on this subject is unnecessary and we have accordingly omitted the section, and left the period of limitation in the case of such applications to be determined by the Indian Limitation Act, 1877.

9. It is objected that the provisions of section 40 of the Bill as re-published (now section 39), which allow an application for re-hearing to be made to the High Court, will deprive the decisions of the Small Cause Court of their finality, and give rise to increased litigation and expense. We think that in the case of suits for an amount or value exceeding one thousand rupees the judgment of the Small Cause Court should not be absolutely final. There should be no appeal in such cases, but the parties should have the power, on certain conditions, of obtaining a re-hearing. In suits for a lesser amount, we think the judgment should be final as it is at present, and we have therefore amended the section so as to permit applications under it to be made only in suits for an amount or value exceeding one thousand rupees.

10. We think that it will be convenient to have all the law peculiar to the Presidency Small Cause Courts within the compass of a single enactment, and we have therefore repealed the Distress Act, 1875, and re-enacted it with such amendments as seemed necessary to make it harmonize with the rest of the measure.

11. Section 72 of the Bill as re-published (now section 90) prohibited attorneys of the High Court from addressing the Court or examining witnesses in suits for an amount or value exceeding one thousand rupees. This prohibition has been very generally objected to and we have withdrawn it. At the same time we see no reason for giving this privilege to pleaders of the Small Cause Court. The Small Cause Court never had jurisdiction in such suits before, and the pleaders consequently never have had the privilege of addressing a Court in cases of such importance.

12. The Bill has been duly published, and we consider that the amendments now made are of sufficient importance to require its re-publication. We have accordingly altered the date of its commencement from the first of January, 1882, to the first of March, 1882, and recommend that it now be re-published.

W. STOKES.

J. GIBBS.

JOTINDRA MOHAN TAGORE.

I agree that the amendments and changes made by the Select Committee are improvements, and I agree that the Bill should be re-published, but I am not prepared to vote for its being passed.

G. H. P. EVANS.

*The 28th December, 1881.*

### No. III. THE PRESIDENCY SMALL CAUSE COURTS BILL, 1882.

#### PREAMBLE.

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## No. III.

*A Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency towns.*

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of

Calcutta, Madras and Bombay; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called  
 Short title. "The Presidency Small Cause Courts Act, 1882"; and  
 Commencement. it shall come into force on the first day of March, 1882.

But nothing herein contained shall affect the provisions of the Army Act, 1881, section 151, or the rights or liabilities of any person under any decree passed before that date.

2. On and from the day on which this Act comes into force the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted, appointments made and securities given under any of the said enactments shall, as far as may be, be deemed to have

been respectively constituted, made and given under this Act.

All references to any enactment hereby repealed made in Acts passed prior to the day on which this Act comes into force shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

3. In Act No. XXIII of 1850 (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures "Act VII. 1847," the words and figures "The Presidency Small Cause Courts Act, 1882, Chapter VIII," shall be substituted; the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners" the words "the Judges of the Court of Small Causes at Calcutta," shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures "chapter XXXIX," the words and figures "and by the Presidency Small Cause Courts Act, 1882," shall be inserted

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

## CHAPTER II.

## CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

All barristers who when this Act comes into force are, or are acting as, Judges of the Small Cause Court shall, for the purposes of this sec-

tion, be deemed to be advocates of a High Court.

XXVI Rank and precedence of Judges. 8. The Chief Judge shall be the first of the Judges in rank and precedence.

VII of 8. The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

VII of 119. IX of 23. 9. Except as otherwise provided by this or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for all matters not specially provided for by this Act, and for the exercise by one or more of its Judges of any powers conferred on the Small Cause Court by this Act or by any other law for the time being in force.

XVI of 14. 10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

of 38. 11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

VII of 10(b). IX of 24. 12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

of 13. 13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court; and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

IX of 14. 14. The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature as the Chief Judge may, from time to time, by rule, direct.

VII of 23. 15. The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees. 16. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to

the file of the Registrar any suit which the latter is competent to try.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature.

### CHAPTER III.

#### LAW ADMINISTERED BY THE COURT.

16. All questions other than questions relating to procedure or practice which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

### CHAPTER IV.

#### JURISDICTION, IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—when the amount or value of the subject-matter does not exceed two thousand rupees: and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain within such local limits; or

(c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

**Explanation I.**—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

**Explanation II.**—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

**Explanation III.**—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Act IX of  
1850, s. 25.

Suits in which Court has no jurisdiction. 19 The Small Cause Court shall have no jurisdiction in—

Sec 5 Bom. H.  
C. Rep. (G.  
C. J.) 1.

(a) suits concerning the assessment or collection of the revenue;

(b) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

Act X of  
1877, s. 16,  
cls. (a) to (d).

(d) suits for the recovery of immoveable property;

(e) suits for the partition of immoveable property;

(f) suits for the foreclosure or redemption of a mortgage of immoveable property;

(g) suits for the determination of any other right to or interest in immoveable property;

(h) suits for the specific performance or rescission of contracts;

(i) suits to obtain an injunction;

(j) suits for the cancellation or rectification of instruments;

(k) suits to enforce a trust;

(l) suits for a general average loss and suits on policies of insurance on sea-going vessels;

(m) suits for compensation in respect of collisions on the high seas;

(n) suits for compensation for the infringement of a patent, copyright or trademark;

(o) suits for a dissolution of partnership, or for an account of partnership-transactions;

(p) suits for an account of property and its due administration under the decree of the Court;

(q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(r) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(s) suits for declaratory decrees;

(t) suits for possession of a hereditary office;

(u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

19 & 20 Vic.  
c. 106, s. 27.

(v) suits on any judgment of a High Court;

(w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the

Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section twenty-one applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

## CHAPTER V.

### PROCEDURE IN SUITS.

23. The portions of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act:

Provided that, in the case of all or any suits for an amount or value not exceeding one thousand rupees, the Court may, subject to the control of the Local Government, from time to time, by notification in the official Gazette, declare that any of the said portions of the said Code shall not extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications as the Court, subject to the control aforesaid, may think fit.

**24. Notwithstanding anything contained in***Res judicata.*

section 13 of the Code of Civil Procedure, no decision passed under the provisions of this Act shall in any Court other than the Small Cause Court be conclusive as to anything except the right at the time of such decision to the relief granted thereby, or the absence of a right at such time to any relief claimed by the plaintiff and withheld by such decision.

**25. Except in cases of set-off under the Code**

No written statement of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

**26. When a period of eight days from the***Return of documents admitted in evidence.*

decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same :

Provided that a document may be returned at any time before any of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original: Provided also that no document shall be returned which by force of the decree has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

**27. In any suit in which the defendant***Compensation payable by plaintiff to defendant in certain cases.*

appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

**28. Whenever the Small Cause Court issues a***Decree-holder to accompany officer executing warrant.*

warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to

such officer the judgment-debtor or the property to be attached, as the case may be.

**29. When the judgment-debtor under any***Things attached to immoveable property and removable by tenant to be deemed moveable in execution.*

decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

**30. Whenever any judgment-debtor, who has***Discharge of judgment-debtor on sufficient security.*

been arrested in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged.

**31. Whenever it appears to the Small Cause***Court may in certain cases suspend execution of decree.*

Court that any judgment-debtor under its decree is unable, from sickness or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree or make such order as it thinks fit.

**32. If the judgment-debtor under any decree of***Execution of decree of Small Cause Court by other Courts.*

the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—to the High Court ;

(2) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

**33. Notwithstanding anything contained in***Minors may sue in certain cases as if of full age.*

the Code of Civil Procedure 1850, as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

**34. Any non-judicial or quasi-judicial act***Power to delegate non-judicial duties.*

which the Code of Civil Procedure 1877, as applied by this Act requires to be done by a Judge, and any act which may be done by



a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

New.

35. The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

New.

36. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

New.

37. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

## CHAPTER VI.

### NEW TRIALS AND RE-HEARING.

(19. Act XI of 1865, s. 21.)  
42a, rule 23.

38. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive; but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure) order a new trial to be held upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

39. Any party may, within eight days after the judgment in any suit in which the amount or value of the subject-matter exceeds one thousand rupees, apply to the High Court for an order that such suit may be re-heard.

Such application shall be supported by affidavits, and, in case the applicant has appeared by advocate, vakil or attorney, by a certificate from the leading counsel at the hearing that in his opinion there are good grounds for re-hearing the suit, and if, on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure, relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

40. On the day fixed under section thirty-nine or Mr. I on any other day to which the hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree or order under this section.

41. Every decree or order made by any High Court upon any such re-hearing may either be executed by such High Court in the same manner as other decrees or orders of such Court or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

## CHAPTER VII.

### RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

42. When any person has had possession of any Act I 1850. 10 & 11 c. 103. immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission of, another person, or of some person through whom such other person claims, and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person, such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

43. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

44. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-two, be entitled to an order addressed to

a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

*Explanation.*—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

45. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant; and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

46. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

47. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person claiming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

48. Whenever on an application being made under section forty-two the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-four.

Nothing contained in section twenty-two shall apply to suits under this section.

49. In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

50. Recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

## CHAPTER VIII.

### DISTRESSES.

51. This chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of judicature at Fort William, Madras and Bombay. But nothing contained in this chapter applies—

- (a) to any rent due to Government;
- (b) to any rent which has been due for more than twelve months before the application mentioned in section fifty-four.

52. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this chapter, and may from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

53. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

54. Any person claiming to be entitled to arrears of rent of any house or premises to which this chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

Act I of 1875,  
s. 7.

**55.** The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form contained in the same schedule (marked B) addressed to any one of such bailiffs.

The Judge may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

Act I of 1875,  
s. 8.

**56.** Every distress under this chapter shall be made after sunrise and before sunset, and not at any other time.

Act I of 1875,  
s. 9.

**57.** The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter:

Provided that he shall not enter or break open the door of any room appropriated for the *zanáná* or residence of women, which by the usage of the country is considered private.

Act I of 1875,  
s. 10.

**58.** In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may in the bailiff's judgment be sufficient to cover the amount of the said rent, together with the costs of the said distress:

Provided that the bailiff shall not seize—

- (a) things in actual use; or
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or
- (c) the debtor's necessary wearing apparel; or
- (d) goods in the custody of the law.

Act I of 1875,  
s. 11.

**59.** The bailiff may impound or otherwise secure the property so seized, in or on the house or premises chargeable with the rent.

Act I of 1875,  
s. 12.

**60.** On seizing any property under section fifty-eight the bailiff shall make an inventory of such property, and shall give a notice in writing to the effect of the form in the third schedule hereto annexed (marked C) to the debtor, or to any other person upon his behalf in or upon the said house or premises.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

Act I of 1875,  
s. 13.

**61.** The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly

constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just, and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

**62.** If any claim be made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit; and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

**63.** In any case under section sixty-one or section sixty-two the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit, and may for that purpose make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit in respect of injury caused by the distress.

**64.** In any application under section sixty-one or any claim under section sixty-two, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment

of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit in respect of injury caused by the distress which gave rise to the case wherein such order was made.

- of 1875. **65.** In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form in the third schedule hereto annexed (marked D).

The bailiffs shall file in the same Court a copy of every notice given under this section.

- of 1875. **66.** In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall on realizing the proceeds pay over the amount thereof to the Registrar of the Small Cause Court, and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor:

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

- of 1875. **67.** No costs of any distress under this chapter shall be taken or demanded except those mentioned in the part of the third schedule hereto annexed (marked E).

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

- of 1875. **68.** The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Act, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses shall be duly entered. He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

- of 1875. **69.** No distress shall be levied for arrears of rent, except under the provisions of this chapter; And any person, except a bailiff appointed under section fifty-two, levying or attempting to levy any such distress shall, on conviction before a Presidency Magistrate, be liable to be

punished by fine which may extend to five hundred rupees and imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

## CHAPTER IX.

### REFERENCES TO HIGH COURT.

- 70.** If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

- 71.** When judgment is given under section seventy contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

## CHAPTER X.

### FEES AND COSTS.

- 72.** A fee not exceeding—  
(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section thirty-nine or section forty-two; and no such plaint or application shall be received until such fee has been paid.

A fee of ten rupees shall be paid on the filing of every agreement under Chapter XXXVIII of the Code of Civil Procedure.

- 73.** The fees specified in the third and fourth columns of the fourth Schedule hereto annexed shall be



paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

Act IX of 1850, s. 20.

74. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Act IX of 1850, s. 20.

75. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-two made, by poor persons, and may issue processes on behalf of such persons, without payment of the fees mentioned in sections seventy-two and seventy-three, or on a part-payment of such fees.

Act IX of 1850, s. 20.

76. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections seventy-two and seventy-three: Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Act XXVI of 1864, s. 13.

77. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

78. Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870.

#### CHAPTER XI.

##### MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

Act XVII of 1875, s. 70: Act XVII of 1877, s. 36: Act IX of 1850, s. 86.

79. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Act IX of 1850, s. 85.

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or

warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

81. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or default of officers. Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

82. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

83. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

#### CHAPTER XII.

##### CONTEMPT OF COURT.

84. When any such offence as is described in section 175, 178, 179, 180 or 228 of the Indian Penal Code is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to one month unless such fine is sooner paid.

85. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

86. If the Court considers that a person accused of any offence referred to in section eighty-four and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section eighty-four, the Court, after recording the facts constituting the offence and the statement of the accused as

hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

1872. 87. When the Court has, under section eighty-  
Discharge of offender four or section eighty-six, sentenced an offender to punishment, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

1872. 88. If any witness before the Small Cause Court  
Imprisonment or commitment of person refusing to answer or produce document. refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section eighty-four or eighty-six.

1872. 89. Any person deeming himself aggrieved  
Appeal from orders by an order under section eighty-four or section eighty-eight may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

### CHAPTER XIII.

#### MISCELLANEOUS.

90. No person other than an advocate, vakil or attorney of the High Court, or a person who is at the time this Act comes into force a pleader of the Small Cause Court, shall appear, plead or act in any suit or proceeding in the Small Cause Court under this Act, and

no person other than—

(a) an advocate of the High Court instructed by a vakil or attorney of such Court or by a pleader of the Small Cause Court, or

(b) a vakil or attorney of the High Court, shall address the Court or examine witnesses at the hearing of any such suit in which the amount or value of the subject-matter exceeds one thousand rupees.

Nothing in this section shall affect the right of any party to conduct his own case or that of any

other party to the suit, or the right of any recognized agent of a party under the Code of Civil Procedure as applied by this Act.

91. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

92. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

93. The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court for records, returns and statements, in such form and manner as such Government or Court, as the case may be, thinks fit.

94. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

95. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

96. No suit shall lie upon any decree of the Small Cause Court.

97. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

98. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

99. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

## THE FIRST SCHEDULE.

(See section 2.)

## ENACTMENTS REPEALED.

## A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

## B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850.	The whole.
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
I of 1875 ...	To regulate Distresses for Rents in the Presidency towns.	The whole.
X of 1877 ...	The Code of Civil Procedure.	Section eight, para. 2.

## C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

## THE SECOND SCHEDULE.

(See section 23.)

## PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

## PRELIMINARY: Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts, and *Res Judicata*, except section 11.

## CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24 and section 25, paragraphs 2 and 3.

## CHAPTER III.—Of Parties and their Appearances, Applications and Acts, except section 37, clause (d), and the last paragraph.

## CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.

## CHAPTER V.—Of the Institution of Suits, except section 53, clause (c), section 55, section 57, clause (d), and sections 58 and 62.

## CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66 and 86.

## CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

## CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.

## CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

## CHAPTER XI.—Settlement of issues, sections 150 and 151.

## CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.

## CHAPTER XIII.—Of Adjournments.

## CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

## CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

## CHAPTER XVI.—Of Affidavits.

## CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207 and 211 to 215 (both inclusive).

## CHAPTER XVIII.—Of Costs.

## CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

## CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

## CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

## CHAPTER XXIII.—Of Payment into Court.

## CHAPTER XXIV.—Of Requiring Security for Costs.

CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVII.—Suits by or against Government, or public officers.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of immoveable property.

CHAPTER XXXV.—Interlocutory orders, sections 498, 499, 500 and 502.

CHAPTER XXXVI.—Appointment of Receivers, section 503.

CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.

CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause (b), as relates to immoveable property.

CHAPTER XLVI.—Of Reference to and Revision by High Court.

CHAPTER XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

### THE THIRD SCHEDULE.

#### FORMS.

##### A.

[See section 54.]

In the Small Cause Court for

A. B. (Plaintiff),

versus

C. D. (Defendant).

A. B. of \_\_\_\_\_, in the town of \_\_\_\_\_, maketh oath [or affirms] and saith that C. D. \_\_\_\_\_, of \_\_\_\_\_, is justly indebted to \_\_\_\_\_ in the sum of Rs. \_\_\_\_\_ for arrears of rent of the house and premises No. \_\_\_\_\_, situated at \_\_\_\_\_, in the town of \_\_\_\_\_, due for \_\_\_\_\_ months, to wit from \_\_\_\_\_ to \_\_\_\_\_, at the rate of Rs. \_\_\_\_\_ per mensem.

Sworn [or affirmed] before me the \_\_\_\_\_ day of \_\_\_\_\_ 188 .

Judge [or Registrar.]

##### B.

[See section 55.]

In the Small Cause Court for

#### FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C. D., on the house and premises situate at, No. \_\_\_\_\_, in the town of \_\_\_\_\_, for the sum of \_\_\_\_\_ Rs. and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated \_\_\_\_\_ day of \_\_\_\_\_

(Signed and sealed).

To E. F., Bailiff and Appraiser.

##### C.

[See section 60.]

In the Small Cause Court for

#### FORM OF INVENTORY AND NOTICE.

(State particulars of property seized).

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of \_\_\_\_\_ Rs., being the amount of \_\_\_\_\_ months' rent due to A. B. at \_\_\_\_\_ last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the \_\_\_\_\_ day of \_\_\_\_\_ 188 .

(Signed) E. F.,

Bailiff and Appraiser.

To C. D.



D.

[See section 65.]

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the \_\_\_\_\_ day of \_\_\_\_\_, under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which a notice and inventory were duly served upon you [or upon \_\_\_\_\_ on your behalf, as the case may be] under date the \_\_\_\_\_, and that the said property will be sold on the \_\_\_\_\_ [two clear days at least after the date of the notice] at \_\_\_\_\_ pursuant to the provisions of the said Act. Dated this \_\_\_\_\_ day of \_\_\_\_\_ 188--.

(Signed) E. F.  
G. H.,

Bailiff and Appraisers.

To C. D.

E.

[See section 67.]

In the Small Cause Court for

## SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.		Affidavit and warrant to distrain.	Order to sell.	Commission.	Total.
Rs.	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1	and under 5	0 4 0	0 8 0	0 8 0	1 4 0
5	" 10	0 8 0	0 8 0	1 0 0	2 0 0
10	" 15	0 8 0	0 8 0	1 8 0	2 8 0
15	" 20	0 8 0	1 0 0	2 8 0	3 8 0
20	" 25	0 12 0	1 0 0	2 8 0	4 4 0
25	" 30	1 0 0	1 0 0	3 0 0	5 0 0
30	" 35	1 0 0	1 0 0	3 8 0	5 8 0
35	" 40	1 0 0	1 8 0	4 0 0	6 8 0
40	" 45	1 4 0	2 0 0	4 8 0	7 12 0
45	" 50	1 8 0	2 0 0	5 0 0	8 8 0
50	" 60	2 0 0	2 0 0	6 0 0	10 0 0
60	" 80	2 8 0	2 8 0	6 8 0	11 8 0
80	" 100	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100		3 0 0	3 0 0	7 per centum	--

The above scale is intended to include all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons were kept in charge of property distrained, four annas per day must be paid per man.

## THE FOURTH SCHEDULE.

(See section 73.)

## FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.	Fee for other processes.
Rs. °	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

R. J. CROSTHWAITE,  
Offg. Secy. to the Govt. of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th January, 1882, and was referred to a Select Committee:—

No. 2 of 1882.

*A Bill to exempt certain vessels from the Indian Ports Act, 1875, section 38.*

**WHEREAS** it is enacted by the Indian Ports Act, 1875, section thirty-eight, that no vessel of the burden of two hundred tons or upwards shall be moved in any port to which the said section has been specially extended without having a Pilot, Harbour-master or Assistant of the Master Attendant or Harbour-master on board; and that no vessel of any burden less than two hundred tons and exceeding one hundred tons shall be moved in any such port without having on board a Pilot, Harbour-master or Assistant of the Master Attendant or Harbour-master, unless authority in writing so to do has been obtained from the Conservator or some officer empowered by him to give such authority;

And whereas the said recited section has been specially extended to the Port of Bombay;

and whereas it is expedient to exempt Native vessels when moved in the said Port from the

provisions of the said recited section; It is hereby enacted as follows:—

Addition to section 38 of Act XII of 1875.

1. To the said section the following shall be added:—

“Nothing in this section shall be deemed to apply to Native vessels in the Port of Bombay exempted from the provisions of the section when they are moved in the Port of Bombay.”

“If any question arises as to whether any vessel is a Native vessel within the meaning of this section, the decision thereon of such authority as the Governor of Bombay in Council may from time to time appoint in this behalf shall be conclusive.”

Cf. Act XI of 1881, s. 1, para. 2.

## STATEMENT OF OBJECTS AND REASONS.

Section 38 of the Indian Ports Act, 1875, which has been extended to the Port of Bombay, provides that no vessel of the burden of one hundred tons or upwards shall be moved in port without having a Pilot, Harbour-master or other officer on board. The Trustees of the Port and the Government of Bombay are of opinion that the pilotage of Native vessels in that port is both undesirable and impossible; and the Government of India has therefore decided to legislate so as to exempt such vessels, when moved in the Port of Bombay, from the prohibition contained in section 38 of the Indian Ports Act, 1875. With this object the present Bill has been prepared.

WHITLEY STOKES.

The 31st December, 1881.

B. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th January, 1882, and was referred to a Select Committee:—

## No. 3 OF 1882.

*A Bill to amend the Code of Civil Procedure.*

For the purpose of amending the Code of Civil Procedure; It is hereby enacted as follows:—

**1.** In the proviso to section 266 of the said Code, for clause (h), the following shall be substituted, namely:—“(h) the salary of a public officer, or of any servant of a railway company, when such salary does not exceed twelve rupees *per mensem*, and one moiety of the salary of any such officer or servant, when his salary exceeds that amount;”

**2.** In section 434 of the said Code, line 3, before the word “Courts”, and in section 650A of the said Code, line 1, before the word “Court”, the words “Civil or Revenue” shall be inserted; and the following words shall be added to the latter section, namely:—“The Governor General in Council may by like notification cancel any notification made under this section, but not so as to invalidate the service of any summons previously served.”

**3.** In section 539 of the said Code, after the word “charitable” the words “or religious” shall be inserted; and in the last paragraph of the same section, before the word “exercised” the words “with the previous sanction of the Local Government” shall be inserted.

**4.** The following section shall be inserted after section 645 of the said Code (namely):—

“645A. In any Admiralty or Vice-Admiralty cause of salvage, towage, or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it think fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

“Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.”

**5.** Act No. X of 1840, section two, and Act No. VII of 1880, section eighty-five, are hereby repealed.

## STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to make two or three small amendments of the Code which the experience of the last three years has shown to be desirable. Section 266 of the Code now exempts from attachment a moiety of the salaries of Government servants and Railway servants. It is now proposed to exempt entirely the salaries of such servants when below a certain small amount, say Rs. 12 per mensem. The proposed legislation is supported by the Local Governments of Bombay, Madras and the North-Western Provinces. The object of course is to benefit the public by providing (as far as the law can do so) that its servants shall not be reduced to a state of inefficiency by the action of their creditors.

The learned Advocate-General of Bengal has held that in section 539, which provides for suits relating to public charities, the word “charitable” does not include, as it would do in England, “religious”; there seems, therefore, no means of getting the Court to settle a scheme for the administration of a public religious endowment, and great inconvenience has been felt in consequence both in the Lower Provinces and the Panjáb. The second object of the Bill is therefore to amend this section by inserting after “charitable” the words “or religious”; and section 2 of Act No. X of 1840, which might impede the framing of a scheme for the endowment to which it relates, will be repealed.

Doubts, again, have been raised as to whether sections 434 and 650 A refer to Revenue, as well as to Civil, Courts, and whether a notification issued under the latter section can be cancelled. The Bill will preclude these doubts.

Lastly, the opportunity has been taken to transfer to its proper place in the Code the section (85) in Act VII of 1880, providing for the assistance of assessors in certain causes in Courts exercising Admiralty or Vice-Admiralty jurisdiction.

WHITLEY STOKES.

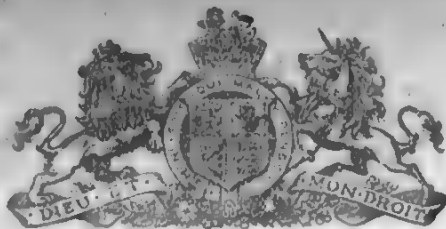
CALCUTTA;

The 16th January, 1882.

R. J. CROSTHWAITE.

Offg. Secy. to the Govt. of India.

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# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 28, 1882.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th January, 1882, and was referred to a Select Committee:—

No. 2 of 1882.

*A Bill to exempt certain vessels from the Indian Ports Act, 1875, section 38.*

WHEREAS it is enacted by the Indian Ports Act, 1875, section thirty-eight, that no vessel of the burden of two hundred tons or upwards shall be moved in any port to which the said section has been specially extended without having a Pilot, Harbour-master or Assistant of the Master Attendant or Harbour-master on board; and that no vessel of any burden less than two hundred tons and exceeding one hundred tons shall be moved in any such port without having on board a Pilot, Harbour-master or Assistant of the Master Attendant or Harbour-master, unless authority in writing so to do has been obtained from the Conservator or some officer empowered by him to give such authority;

And whereas the said recited section has been specially extended to the Port of Bombay;

and whereas it is expedient to exempt Native vessels when moved in the said Port from the

provisions of the said recited section; It is hereby enacted as follows:—

Addition to section 38 of Act XII of 1875.

1. To the said section the following shall be added:—

“Nothing in this section shall be deemed to apply to Native vessels in the Port of Bombay exempted from the provisions of the section when they are moved in the Port of Bombay.”

“If any question arises as to whether any vessel is a Native vessel within the meaning of this section, the decision thereon of such authority as the Governor of Bombay in Council may from time to time appoint in this behalf shall be conclusive.”

### STATEMENT OF OBJECTS AND REASONS.

Section 38 of the Indian Ports Act, 1875, which has been extended to the Port of Bombay, provides that no vessel of the burden of one hundred tons or upwards shall be moved in port without having a Pilot, Harbour-master or other officer on board. The Trustees of the Port and the Government of Bombay are of opinion that the pilotage of Native vessels in that port is both undesirable and impossible; and the Government of India has therefore decided to legislate so as to exempt such vessels, when moved in the Port of Bombay, from the prohibition contained in section 38 of the Indian Ports Act, 1875. With this object the present Bill has been prepared.

WHITLEY STOKES.

The 31st December, 1881.

R. J. CROSTHWATTE,

Offg. Secy. to the Govt. of India.



**GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.**

[Second Publication]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th January, 1882, and was referred to a Select Committee:—

**No. 3 OF 1882.**

**A Bill to amend the Code of Civil Procedure.**

For the purpose of amending the Code of Civil Procedure; It is hereby enacted as follows:—

**1.** In the proviso to section 266 of the said Code, for clause (k), the following shall be substituted, namely:—“(k) the salary of a public officer, or of any servant of a railway company, when such salary does not exceed twelve rupees *per mensem*, and one moiety of the salary of any such officer or servant, when his salary exceeds that amount;”

**2.** In section 434 of the said Code, line 3, before the word “Courts”, and in section 650A of the said Code, line 1, before the word “Court”, the words “Civil or Revenue” shall be inserted; and the following words shall be added to the latter section, namely:—“The Governor General in Council may by like notification cancel any notification made under this section, but not so as to invalidate the service of any summons previously served.”

**3.** In section 539 of the said Code, after the word “charitable” the words “or religious” shall be inserted; in clauses (a) and (b) of the same section, for the words “of the charity,” the words “under the trust” shall be substituted, and in the last paragraph of the same section, before the word “exercised” the words “with the previous sanction of the Local Government” shall be inserted.

**4.** The following section shall be inserted after section 645 of the said Code (namely):—

“645A. In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it think fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

“Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.”

**5.** Act No. X of 1840, section two, and Act No. VII of 1880, section eighty-five, are hereby repealed.

**STATEMENT OF OBJECTS AND REASONS.**

THE object of this Bill is to make two or three small amendments of the Code which the experience of the last three years has shewn to be desirable. Section 266 of the Code now exempts from attachment a moiety of the salaries of Government servants and Railway servants. It is now proposed to exempt entirely the salaries of such servants when below a certain small amount, say Rs. 12 per mensem. The proposed legislation is supported by the Local Governments of Bombay, Madras and the North-Western Provinces. The object of course is to benefit the public by providing (as far as the law can do so) that its servants shall not be reduced to a state of inefficiency by the action of their creditors.

The learned Advocate-General of Bengal has held that in section 539, which provides for suits relating to public charities, the word “charitable” does not include, as it would do in England, “religious”; there seems, therefore, no means of getting the Court to settle a scheme for the administration of a public religious endowment, and great inconvenience has been felt in consequence both in the Lower Provinces and the Panjāb. The second object of the Bill is therefore to amend this section by inserting after “charitable” the words “or religious”; and section 2 of Act No. X of 1840, which might impede the framing of a scheme for the endowment to which it relates, will be repealed.

Doubts, again, have been raised as to whether sections 434 and 650 A refer to Revenue, as well as to Civil, Courts, and whether a notification issued under the latter section can be cancelled. The Bill will preclude these doubts.

Lastly, the opportunity has been taken to transfer to its proper place in the Code the section (85) in Act VII of 1880, providing for the assistance of assessors in certain causes in Courts exercising Admiralty or Vice-Admiralty jurisdiction.

WHITLEY STOKES.

CALCUTTA;

The 16th January, 1882.

R. J. CROSTHWAITE,  
Offg. Secy. to the Govt. of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

(Second Publication.)

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th January 1882:—

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to Criminal Procedure was referred, have the honour to report that we have considered the Bill and the papers noted in the Schedule annexed to this Report.

We have made in the Bill only three important amendments:—

First, we think that the present law gives too great latitude to the Courts with regard to the examination of an accused person. The object of such examination is to give the accused an opportunity of explaining any circumstances which may tend to criminate him, and thus to enable the Court, in cases where the accused is undefended, to examine the witnesses in his interest. It was never intended that the Court should examine the accused with a view to elicit from him some statement which would lead to his conviction. We have therefore limited the power of interrogating the accused by adding to the first paragraph of section 342 the words "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him." We think the accused should always have this opportunity of explaining, and we have therefore required the Court to question him generally for that purpose before he enters on his defence.

Next, we have amended the law as to whipping. We have provided, in section 32, that no Magistrate of the second class shall pass a sentence of whipping unless specially empowered in that behalf by the Local Government. We have also provided, in section 392, that whipping shall be inflicted with a light rattan not less than half an inch in diameter, and we have abolished whipping with a cat-of-nine-tails. We have also added a clause containing the provisions of section 7 of Act VI of 1864, and in addition thereto we have prohibited the infliction of whipping on any person whom the Court considers to be more than 45 years of age.

Thirdly, we are of opinion that it is unnecessary and inexpedient to retain in section 423 the power which Appellate Courts have at present of enhancing sentences on appeals presented by convicted persons, and we have accordingly withdrawn it.

We have also made the following minor amendments in the Bill:—

## CHAPTER I.—Preliminary.

At the suggestion of Colonel Weldon, the Chief Magistrate of Madras, we have omitted Madras from the saving provisions of clause (a), section 1. The Bill will thus apply

NOTE.—The chapters and sections referred to in the report are the chapters and sections of the Bill as introduced.

to the police in the town of Madras, and we have, therefore, repealed so much of Madras Act VIII of 1867, and the Coroners' Act, 1881, as declared what provisions of the Code of Criminal Procedure were applicable to the police of Madras. As, however, it is inexpedient to displace the Coroners' Act, IV of 1871, we have added a clause (a) providing that the provisions contained in sections 175 to 177 of the Bill, both inclusive, relating to inquests, shall not apply to the police in the town of Madras.

We have altered the definition of "complaint" so as to show that the allegation made to the Magistrate may be either oral or in writing.

We have re-drawn section 5 so as to provide clearly that an offence punishable under a law other than the Indian Penal Code is to be tried in accordance with the provisions of the Bill, but subject to any enactment regulating the manner or place of inquiring into or trying such offence.

#### CHAPTER II.—*Constitution of Criminal Courts and Offices.*

In the first paragraph of section 17 we have added words giving the District Magistrate power to make rules as to the distribution of business among the Magistrates and Benches in his district. We have also, in the third paragraph, given the Sessions Judge a similar power with regard to the distribution of business among Assistant Sessions Judges.

In section 21 we have added words expressly declaring that every Chief Magistrate shall exercise in the Presidency-town to which he is appointed all the powers conferred on him by this Code.

#### CHAPTER III.—*Powers of Courts.*

In section 31, third paragraph, we have given an Assistant Sessions Judge power to pass a sentence of transportation for a term not exceeding seven years. The Bill, following section 18 of the present Code, gave the Assistant Sessions Judge no power to pass a sentence of transportation. As the Code gives him power to pass a sentence of seven years' imprisonment, which under section 59, Indian Penal Code, he could commute to transportation for seven years, it would seem that the omission of the power of passing a sentence of transportation was merely due to an oversight in drafting.

At the suggestion of the Government of Bengal we have omitted section 38, conferring police powers on Magistrates. We consider that it is inexpedient to invest Magistrates with such powers or to make their connection with the Police more close than it is at present.

We have confined to the Local Government the power, given by section 41, of withdrawing powers conferred under the Code. Powers once conferred should not be lightly withdrawn, and we consider it expedient that District Magistrates should not be able to withdraw powers already conferred on their subordinates.

#### CHAPTER IV.—*Aid and Information to the Magistrates, &c.*

We have amended section 42 so as to provide that a person is only bound to assist a Magistrate or police-officer who reasonably demands his aid.

In clause (b) of the same section we have included attempts to injure telegraphs in the list of offences which persons are bound to assist in preventing.

Clause (d), requiring persons to assist the police in extinguishing fires, does not, we think, properly belong to a Code of Criminal Procedure, and we have therefore omitted it.

Section 45 renders it incumbent on native officers who are employed in the collection of revenue or rent of land on the part of Government or the Court of Wards to give information of certain matters to the Magistrate or police-officer. We see no reason why this duty should not also be imposed on all officers so employed, whether they are, or are not, natives of India. We have, therefore, omitted the word "native."

#### CHAPTER V.—*Of Arrest, Escape and Re-taking.*

We have made the last paragraph of section 46 run thus:—"Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death."

In section 52 we have provided that, when it is necessary to cause a woman to be searched, the search shall be made by another woman and with strict regard to decency.

To the persons who, under the provisions of section 54 may be arrested without warrant, we have added "any person having in his possession without lawful excuse any implement of house-breaking."

At the suggestion of the Madras Government we have provided in section 59 that any private person may arrest any person who has been proclaimed as an offender.

In section 62 we have provided that the police shall report to the Magistrate the cases of all persons detained under section 57 for refusing to give their names and addresses.

In section 67 we have added section 49 (as to breaking open doors for purposes of liberation) to the provisions applicable in cases when a person arrests, under section 66, another person who has escaped from lawful custody.

#### CHAPTER VI.—*Processes to compel Appearance.*

We have provided that section 68, which prescribes the form of summons and the persons by whom it is to be served, shall apply to the Presidency-towns.

In section 70 we allow a summons to be served in a Presidency-town by leaving a duplicate with a servant residing with the person summoned.

Section 75 required that a warrant should be sealed by the presiding officer of the Court issuing it. This, it is represented, will cause needless trouble to the presiding officer, and we have, therefore, said that the warrant shall bear the seal of the Court.

We have declared that section 85, which provides for the case of warrants directed to a police-officer, and which are to be executed beyond the local limits of the jurisdiction of the Court issuing them, shall apply to the police in the towns of Calcutta and Bombay.

#### CHAPTER VII.—*Processes to compel Production of Documents, &c.*

In the last clause of section 95, providing for the issue of a summons to produce a document or other thing, we have provided that nothing in the section shall be deemed to affect the Indian Evidence Act, sections 123 and 124—sections which regulate the giving of evidence as to affairs of State and the disclosure of official communications.

In section 104, directing search to be made in the presence of witnesses, we have provided that the list of things found in the search shall specify the place or places in which they are respectively found, and that a copy of the list, signed by the witnesses, shall be delivered to the occupant or person in charge of the place searched, if he so request.

#### CHAPTER VIII.—*Of Security for keeping the Peace and for Good Behaviour.*

The extension in section 108 of the term, for which a Magistrate may in the case of unconvicted persons require security to keep the peace, to three years is objected to. We are of opinion that the term of one year allowed by the present Code is sufficiently long, and have accordingly amended the section.

We agree with the Government of the North-Western Provinces that first class Magistrates should not be allowed to require security for good behaviour under section 111 unless they have been specially empowered in that behalf by the Local Government. We have amended the section accordingly.

To the first paragraph of the section (111) we have added words so as to allow of security for good behaviour being required from persons who habitually commit extortion, or, in order to the committing of extortion, habitually put or attempt to put persons in fear of injury. In the North-Western Provinces there is a class of bad characters who habitually extort money from respectable people by threatening to insult or beat them; and we have added this provision at the request of the Government of those Provinces, in order to enable Magistrates to protect the public against such a system of extortion.

To the first paragraph of section 118 we have added words to show that the Magistrate may, besides proceeding to inquire into the truth of the information upon which he has acted, also take such further evidence as may appear necessary.

In section 124, which provides for imprisonment in default of security, we have allowed the person so imprisoned to give the security required to the officer in charge of the jail wherein he is confined, as well as to the Court or Magistrate requiring the security.

In section 126 we have required the District Magistrate to record in writing his reasons for cancelling a bond for keeping the peace.

To the first paragraph of section 127 we have added words to show that a Magistrate can only exercise the power of discharging sureties in the case of a bond executed within the local limits of his jurisdiction.

#### CHAPTER X.—*Public Nuisances.*

We concur with the majority of officers consulted in objecting to the addition, in the third paragraph of this section, of the words "offensive to the religious feelings of any considerable section thereof," and we have accordingly struck them out.

#### CHAPTER XII.—*Disputes as to Immoveable Property.*

To section 146 we have added a paragraph to the effect that nothing in the section is to prevent a party who is called on to attend the Court from showing that no dispute exists or has existed, and that in such case the Magistrate shall cancel his order, and further proceedings shall be stayed.

To section 149 we have added a paragraph giving the Magistrate power to make orders as to the payment of costs incurred by parties to proceedings under chapter XII.



CHAPTER XIV.—*Information to the Police and their Powers to investigate.*

We have made the rule contained in section 163 as to statements made to the police expressly subject to the provisions of section 27 of the Indian Evidence Act, 1872.

In section 167, second paragraph (when the officer in charge of a police-station may require another to issue search-warrant), we have omitted, as unnecessary, the provisions for the case where the thing searched for is found in a different district.

The last part of the first paragraph of section 168, which provides that the accused need not be forwarded to the Magistrate, if the police-officer thinks that he should not be so forwarded, has been objected to on the ground that it leaves too great a discretion to the police—a discretion which it is feared they will abuse. We concur with this objection, and have therefore altered the section so as to leave the present law unchanged.

CHAPTER XV.—*Jurisdiction of Criminal Courts in Enquiries and Trials.*

We have amended the second paragraph of section 193 so as to authorize the District Magistrate to empower a Magistrate of the first class who has taken cognizance of a case to transfer it for enquiry or trial to any other specified and competent Magistrate.

Where a subordinate Court has refused its sanction to a prosecution for any offence mentioned in section 196, we have given power to the superior Court to grant such sanction.

CHAPTER XVI.—*Complaints to Magistrates.*

In section 203 we have provided that, when a Magistrate decides on postponing the issue of process and directing a local investigation, he must first record his reasons for distrusting the truth of the complaint.

We have authorized a Magistrate so postponing the issue of process to inquire into the case himself; and have also made it clear that he may order the local investigation to be made by a person not being a Magistrate or police-officer.

CHAPTER XVII.—*Commencement of Proceedings before Magistrates.*

In section 205 the Bill provided that, "if the case appears to be one in which according to that column a warrant should issue in the first instance, the Magistrate shall ordinarily issue his warrant." We think that it should be made clear that the Magistrate may in his discretion issue either a summons or warrant in the first instance, and have, therefore, made the sentence run thus:—"he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear," &c.

In the second paragraph of section 206 we have authorized the Magistrate inquiring into or trying the case, instead of the Magistrate issuing a summons, to direct the personal attendance of the accused.

CHAPTER XIX.—*Of the Charge.*

To section 235, which provides that three offences of the same kind within one year may be charged together, we have added a clause to show the meaning of the words "offences of the same kind."

We have made section 236, paragraph III, run thus:—"If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one or more of such acts."

CHAPTER XXI.—*Trial of Warrant-cases by Magistrates.*

In section 258 we have added words to show that where an accused applies to the Magistrate to summon a witness his application can only be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice, and that, if so refused, the Magistrate shall record the ground of refusal in writing.

CHAPTER XXII.—*Of Summary Trials.*

We have given power to try cases summarily under section 261 to any Bench of Magistrates invested with the powers of a Magistrate of the first class, and specially empowered in this behalf by the Local Government.

To section 263 we have added a clause providing that no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction on a summary trial.

CHAPTER XXIII.—*Trials before High Courts and Courts of Session.*

Section 274 gives any Judge power to enter on a charge that there is no legal evidence to sustain it, and that such entry shall have the effect of staying proceedings on the charge. It is objected that this power, which is now given only to High Court Judges, will enable a Sessions Judge to quash a commitment. We have altered the section accordingly and made it accord with the present law.

In section 288, which provides for the procedure when a juror ceases to attend, we have added a provision to meet the case of a juror not understanding the language in which evidence is given or interpreted.

To section 290 we have added a paragraph to authorize the Court to record a finding, or direct a jury to return a verdict of not guilty in a case where the accused says that he means to adduce evidence in his defence, but the Court is of opinion that there is no evidence that the accused committed the offence.

After section 310 we have inserted a section providing that, when an accused is charged with a previous conviction, that charge shall not be read out to the jurors or assessors until the accused has pleaded guilty to, or been convicted of, the substantive offence for which he is to be tried.

We have altered section 326, which provides for the summoning of assessors, so as to preclude a doubt as to whether the law requires sessions to be held on dates fixed beforehand at the commencement of each year.

To section 333 we have added words empowering the Judge to direct that the discharge, when the Advocate General stays the prosecution, shall amount to an acquittal.

#### CHAPTER XXIV.—*General Provisions as to Inquiries and Trials.*

Opinions are much divided as to the change of the law in section 337, which permits a Magistrate to tender a pardon to an accused person in any warrant case. On the whole, we are of opinion that no such change should be made, and we have accordingly amended the section.

In cases where a pardon is tendered and accepted by a person, and such person gives evidence before a Magistrate in a preliminary inquiry, we consider that he should not be forced to adhere to that evidence in a subsequent trial, through fear of being prosecuted on an alternative charge of giving false evidence either before the Magistrate or the Judge. It might happen that he was wrongly induced or coerced into giving evidence before the Magistrate. We have accordingly provided in section 339 that no prosecution for giving false evidence in a statement made under promise of pardon shall be entertained without the sanction of the High Court.

We have removed sections 337 and 338 of the Indian Penal Code from the table of compoundable offences in section 345, and placed them in the second paragraph of that section, thereby making the consent of the Court necessary to the compounding of offences under those sections.

We have added to the same table section 298, Indian Penal Code (uttering words, &c., with deliberate intent to wound religious feelings), and section 355 of the same Code (assault with intent to dishonour a person).

We have struck out the offence of cheating under section 417, Indian Penal Code, from the list of compoundable offences, in deference to almost unanimous opinion on the subject.

We have substituted the words "after hearing the evidence for the prosecution and the accused" for the words "upon concluding a trial" in the first paragraph of section 349; and we have extended the section to the case where the Magistrate trying the accused considers that he ought to be required to execute a bond to keep the peace.

#### CHAPTER XXV.—*Mode of Taking and Recording Evidence.*

We have made the provisions of section 356, as to the record of evidence, applicable to cases under chapter XII (disputes as to immovable property).

We have exempted the Chief Court of the Panjáb from the rule, contained in section 364, as to the mode of recording the examination of an accused person.

We have also provided that, when the accused does not understand the language in which his examination is recorded, it is to be interpreted to him.

#### CHAPTER XXVI.—*Of the Judgment.*

We think that, when the original judgment is recorded in a different language from that of the Court, a translation need not under section 372 be filed with the record, except when the accused so requires; and we have amended the section accordingly.

Section 373, which provides that the Court of Session shall forward a copy of its judgment to the District Magistrate, is objected to as involving unnecessary labour. We have therefore, following the present Code (section 302), required the Court to forward only a copy of the finding and sentence.

#### CHAPTER XXVII.—*Submission of Sentences for Confirmation.*

In section 375 we have given the High Court power to make or order a further inquiry to be made, as well as to take or order additional evidence to be taken, in the case of capital sentences submitted to it for confirmation.

#### CHAPTER XXVIII.—*Of Execution.*

We have amended section 388 so as to show that it is intended to allow the Court, in a case when an offender has been sentenced to fine only and to imprisonment in default of pay-

ment of fine, to suspend the execution of the sentence of imprisonment and release him on his furnishing security. We have also provided that, in the event of the fine not being realized, the Court may direct the sentence of imprisonment to be carried into effect.

Section 395 provides that, where a sentence of whipping cannot be executed, the offender shall not be sentenced in lieu of the whipping to a longer term of imprisonment than three months. This term has been generally objected to as inadequate, and we have, therefore, altered it to twelve months.

We have also provided that the section shall not be deemed to authorize a Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the Court is competent to inflict.

#### CHAPTER XXIX.—*Suspensions, Remissions and Commutations.*

Instead of requiring a Judge to furnish a statement of the facts proved on a trial, and of any facts having reference to the propriety of granting an application for the suspension or remission of a sentence, we think it will be enough to require him to state his opinion as to whether the application shall be granted or refused, together with his reasons for such opinion, and we have altered section 401 accordingly.

In the last paragraph of section 402, which gives power to the Governor General in Council or the Local Government to commute sentences, we have, to remove doubts, added after the words "rigorous imprisonment" the words "for a term not exceeding that to which he might have been sentenced." We have also added after the words "simple imprisonment" the words "for a like term." It has been supposed that the corresponding section (822) of the present Code gave the Government power to commute a sentence of transportation, for instance, to a sentence of imprisonment exceeding that for which the offender was liable under the law under which he was convicted. The words we have added will, it is hoped, prevent such a misunderstanding for the future. We have also added "fine" as one of the punishments for which a sentence may be commuted.

#### CHAPTER XXXI.—*Of Appeals.*

In the last proviso to section 423 we have authorized a Court to alter or reverse the verdict of a jury if it is of opinion that such verdict is erroneous owing to a misunderstanding, on the part of the jury, of the law as laid down by the Judge.

To section 424, regulating the judgment of subordinate Appellate Courts, we have added a proviso that, unless the Appellate Court otherwise directs, the accused shall not be brought up or required to attend to hear judgment delivered.

We have in section 426 given the High Court power, in the case of an appeal by a convicted person to a Court subordinate to the High Court, to suspend the sentence and release the convicted person on bail.

In section 439 we have added to the powers of revision which may be exercised by the High Court the powers conferred on a Court of Appeal by section 196 (granting or revoking sanction to prosecute in certain cases) or on a Court by section 338 (power to direct tender of pardon) and the power of enhancing a sentence.

We have also provided that nothing in this section applies to an entry on an unsustainable charge made under section 274 by a Judge of a High Court, or shall be deemed to authorize a High Court to convert an order of acquittal into one of conviction.

#### CHAPTER XXXV.—*Proceedings in Case of certain Offences affecting the Administration of Justice.*

In section 476 (procedure in contempt cases) we have said that the Court may send the case for enquiry or trial to "the nearest Magistrate of the first class" instead of "to the District Magistrate."

We have added to section 480 (procedure in certain cases of contempt) a paragraph declaring that section 443, which says that certain Magistrates only can try European British subjects, does not apply to this section.

In section 486 we have made the whole of the chapter (XXXI) on appeals, so far as it is applicable, apply to appeals from convictions in contempt cases.

#### CHAPTER XXXVI.—*Maintenance of Wives and Children.*

We have amended the third paragraph of section 488 (order for maintenance of wives and children) so as to show that imprisonment is to be awarded only when the allowance remains unpaid after the execution of the warrant of distress.

We have added to the section a paragraph giving the Magistrate power to cancel an order for maintenance when it is proved that the wife is living in adultery, or without sufficient reason refuses to live with her husband, or that they are living separately by mutual consent.

We have also provided that evidence under this chapter shall be recorded in the presence of the husband or father, as the case may be, and in the manner prescribed in the case of summons cases.

CHAPTER XXXVII.—*State-Prisoners.*

This chapter has, in accordance with the wishes of the Secretary of State, been omitted from the Bill; the enactments which this chapter consolidated have been struck out of the schedule of repeals; and the form of warrant of commitment under section 491 has been omitted from schedule V.

CHAPTER XLII.—*Special Rules of Evidence.*

We have omitted the rule contained in section 521 as to presuming good faith in certain cases, as it conflicts with section 105 of the Indian Evidence Act.

CHAPTER XLIV.—*Disposal of Property.*

In the second paragraph of section 528 we have said that the High Court or Court of Session may direct the District Magistrate, instead of the committing Magistrate, to carry into effect its order for the disposal of property. The committing Magistrate might be transferred before the order was made.

We have excepted perishable property from the rule, contained in the third paragraph, that no order for the disposal of property shall be carried out till the period of appeal has elapsed, or, if an appeal is presented, till the appeal has been dismissed.

Section 532 authorizes the Court on a conviction for certain offences to order all the copies of the thing in respect of which the conviction was had, and which remain in the possession or power of the convicted person, to be destroyed. We have extended this power to copies which are in the custody of the Court.

CHAPTER XLVI.—*Irregular Proceedings.*

Before clause (d), section 541 (irregularities which vitiate proceedings), we have added the case where a Magistrate not being empowered by law in this behalf tries an offender.

In section 544, which provides for the case where the confession or statement of an accused person has not been duly recorded, it is provided that "unless the error injures the accused as to his defence on the merits, it shall not affect the admissibility of the statement." For this provision we have substituted the following:—"and notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted, if the error has not injured the accused as to his defence on the merits."

To the irregularities mentioned in section 548, which are not to justify the setting aside of a finding, sentence or order of a Court of competent jurisdiction, we have added irregularities in the warrant, and have included irregularities in any inquiry or other proceeding under the Code as well as irregularities in a trial.

We have also added "the omission to revise any list of jurors or assessors in accordance with section 324."

CHAPTER XLVII.—*Miscellaneous.*

We have amended section 560, which regulates the delivery to the military authorities of persons liable to be tried by court-martial, and given the Governor General in Council power to make rules, consistent with the Code, the Army Act, 1881, and any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court constituted under the Code or by court-martial.

We have modified section 564, which gives power to the High Courts to make certain rules, and have provided that the rules for regulating the practice of High Courts not established by Royal Charter and of Courts subordinate to such Courts shall be made with the previous sanction of the Local Government. We have also added a power to make, with the like sanction, rules for regulating the execution of warrants issued under the Code for the levy of fines.

After section 565 we have added a section providing that no Judge or Magistrate shall, except with the permission of the Appellate Court to which an appeal from his judgment lies, try any case to or in which he is a party or personally interested, and that no Judge or Magistrate shall hear an appeal from an order made by himself.

*Schedule I.*

We think that the power which Act V of 1861, section 24, expressly confers on the police, to lay informations and apply for summonses and other legal processes, should remain intact, and we, therefore, propose to repeal only the last nine words of that section.

*Schedule II.*

At the request of the Government of Bombay we have made offences under section 19 of the Indian Arms Act, 1878, bailable.



*Schedule III.*

To the ordinary powers of Magistrates of the third class we have added the power to restore attached property (section 90).

To the ordinary powers of a Magistrate of the first class we have added the power to issue search-warrants for persons unlawfully confined (section 101), and the power to stop proceedings where there is no complaint (section 250).

To the ordinary powers of a Sub-divisional Magistrate we have added the power to direct warrants to landholders (section 75).

To the ordinary powers of a District Magistrate we have added the power to cancel bonds for keeping the peace (section 126).

*Schedule IV.*

We have re-arranged and amended this schedule, adding a division as to the powers with which a Sub-divisional Magistrate may be invested.

*Schedule V.*

We have shortened several of the forms contained in this schedule, omitted others as unnecessary, and given a form of a charge after a previous conviction.

We have made several verbal amendments in the body of the Bill. It has been duly published, and we recommend that it be passed as now amended ; but first we think that it should be published thrice in the *Gazette of India*.

WHITLEY STOKES.  
RIVERS THOMPSON.  
J. GIBBS.  
H. REYNOLDS.  
JOTINDRA MOHAN TAGORE.  
LOUIS FORBES.  
C. H. T. CROSTHWAITE.

*The 18th January, 1882.*

## SCHEDULE.

- From H. Beverley, Esq., Additional Judge, 24-Parganas, dated 12th April, 1879, [Paper No. 1.]  
From Acting Chief Secretary to Government, Madras, No. 717, dated 31st March, 1879, and enclosure. [Papers No. 2.]  
From Bábú Kanaya Lal, Pleader, Judicial Commissioner's Court, Oudh, dated 15th April, 1879. [Paper No. 3.]  
From R. F. Rampini, Esq., Additional Sessions Judge, Chittagong, dated 23rd April, 1879. [Paper No. 4.]  
From F. J. Goldsmid, Esq., District Superintendent of Police, Ahmadnagar, dated 28th April, 1879. [Paper No. 5.]  
From J. B. Pennington, Esq., District Magistrate, Tinnevely, No. 503, dated 1st May, 1879. [Paper No. 6.]  
From W. M. Coghlan, Esq., Sessions Judge, Tanna, No. 862, dated 13th May, 1879. [Paper No. 7.]  
From F. M. Halliday, Esq., Commissioner, Patna, to Secretary to Government, Bengal, Legislative Department, No. 170 J, dated 27th May, 1879, and enclosure. [Papers No. 8.]  
From F. C. Constable, Esq., Barrister-at-law, Karachi, dated 28th May, 1879, and enclosure. [Papers No. 9.]  
From J. C. Geddes, Esq., Officiating Judge, Bardwán, No. 1068, dated 9th June, 1879. [Paper No. 10.]  
Note by A. G. Macpherson, Esq., dated 30th May, 1879. [Paper No. 11.]  
From H. Beveridge, Esq., District and Sessions Judge, Rungpur, dated 9th June, 1879, and enclosure. [Papers No. 12.]  
Office Memorandum from Military Department, No. 839 S-C, dated 30th June, 1879, and enclosure. [Papers No. 13.]  
Note by T. M. Kirkwood, Esq., Officiating Judge, Tirhut, dated 30th July, 1879. [Paper No. 14.]

From A. M. B. Irwin, Esq., Assistant Commissioner, Sittoung Sub-division, British Burma, dated 21st July, 1879. [Paper No. 15.]

From Hon'ble H. S. Cunningham, dated 31st July, 1879, and enclosure. [Papers No. 16.]

From Secretary for Birár to Resident, Haidarábád, No. 18, dated 21st August, 1879, and enclosures. [Papers No. 17.]

Memorandum by Pandit Sri Kishon, Pleader, High Court, Oudh, dated 14th July, 1879. [Paper No. 18.]

From P. C. Rozario, Esq., Pleader, District Court, Mangalore, dated 20th August, 1879. [Paper No. 19.]

From Secretary for Birár to Resident, Haidarábád, No. 20, dated 28th August, 1879, and enclosure. [Papers No. 20.]

From Secretary to Chief Commissioner, Mysore, No. 4292-J 12, dated 29th August, 1879, and enclosures. [Papers No. 21.]

From Acting Under-Secretary to Government, Bombay, No. 5393, dated 8th September, 1879, and enclosures. [Papers No. 22.]

From Acting Under-Secretary to Government, Bombay, No. 5564, dated 15th September, 1879, and enclosures. [Papers No. 23.]

From Chief Commissioner, Ajmer-Merwára, No. 765, dated 16th September, 1879, and enclosures. [Papers No. 24.]

From Mr. T. Rámá Rau and others, Vakíls, High Court, Madras. [Paper No. 25.]

From Assistant Secretary to Chief Commissioner, Central Provinces, No. 3924-213, dated 24th September, 1879, and enclosures. [Papers No. 26.]

From Acting Under-Secretary to Government, Bombay, No. 5755, dated 23rd September, 1879, and enclosure. [Papers No. 27.]

From Acting Chief Secretary to Government, Madras, No. 2295, dated 5th September, 1879, and enclosures. [Papers No. 28.]

From Mr. A. Nubba Rau and others, Pleaders, District Court, Mangalore, dated 19th September, 1879. [Paper No. 29.]

From Secretary to Chief Commissioner, Assam, No. 1819, dated 30th September, 1879, and enclosures. [Papers No. 30.]

From Acting Chief Secretary to Government, Madras, No. 2485, dated 26th September, 1879, and enclosure. [Papers No. 31.]

From Acting Under-Secretary to Government, Bombay, No. 6579, dated 31st October 1879, and enclosure. [Papers No. 32.]

From Mr. Ullal Raghevendra Rao, Mangalore, dated 14th September, 1879, and 2nd October, 1879. [Papers No. 33.]

From Acting Chief Secretary to Government, Madras, No. 2656, dated 15th October, 1879, and enclosure. [Papers No. 34.]

From Secretary to Government, Panjáb, No. 4055, dated 6th November, 1879, and enclosures. [Papers No. 35.]

From Acting Under-Secretary to Government, Bombay, No. 7229, dated 29th November, 1879, and enclosure. [Papers No. 36.]

From Secretary to Government, North-Western Provinces and Oudh, No. 286 A, dated 20th November, 1879, and enclosures. [Papers No. 37.]

From Secretary to Government, Bengal, No. 2407 T, dated 15th October, 1879, and enclosures. [Papers No. 38.]

From Acting Under-Secretary to Government, Bombay, No. 6693, dated 6th November, 1879, and enclosures. [Papers No. 39.]

From Secretary to Government, Panjáb, No. 4628, dated 23rd December, 1879, and enclosures. [Papers No. 40.]

From Secretary to Government, North-Western Provinces and Oudh, No. 47, dated 9th January, 1880, and enclosures. [Papers No. 41.]

From Hukm Chand and others, Mukhtárs in the Panjáb, dated 27th December, 1879, and enclosure. [Papers No. 42.]

Memorial of Bábu Nobin Chandra Chattarjí and others, Mukhtárs of Birbhúm, dated 5th April, 1880. [Paper No. 43.]

From Officiating Secretary to Chief Commissioner, British Burma, No. 2276, dated 16th April, 1880, and enclosures. [Papers No. 44.]

From Acting Under-Secretary to Government, Bombay, No. 2879, dated 24th April, 1880, and enclosure. [Papers No. 45.]

Memorial of Bábu Náya Kissor and others, Mukhtárs, Silhat District, dated 24th May, 1880. [Paper No. 46.]

- Memorials from Mukhtárs of sundry Districts. [Papers No. 47.]
- From Secretary to Government, North-Western Provinces and Oudh, No. 849, dated 19th July, 1880, and enclosure. [Papers No. 48.]
- From Secretary to Government, Panjáb, No. 208 S, dated 20th July, 1880. [Paper No. 49.]
- Office Memorandum from late Home, Revenue and Agricultural Department, No. 793, dated 31st July, 1880. [Paper No. 50.]
- From Chief Secretary to Government, Madras, to Secretary to Government of India, late Home, Revenue and Agricultural Department, No. 1548, dated 29th June, 1880, and enclosure. [Papers No. 51.]
- From Under-Secretary to Government of India, late Home, Revenue and Agricultural Department, to Secretary to Government, Madras, No. 772, dated 23rd July, 1880. [Papers No. 51.]
- From Registrar, High Court, Calcutta, No. 235, dated 8th February, 1881. [Paper No. 52.]
- From Acting Under-Secretary to Government, Bombay, No. 1150, dated 22nd February, 1881, and enclosures. [Papers No. 53.]
- From Secretary to Government, Bengal, No. 923 J, dated 26th February, 1881. [Paper No. 54.]
- From Officiating Secretary to Government, North-Western Provinces and Oudh, No. 354, dated 31st March, 1881, and enclosure. [Papers No. 55.]
- From A. M. B. Irwin, Esq., Assistant Commissioner, Sittoung Sub-division, British Burma, dated 17th June, 1881. [Paper No. 56.]
- From Chief Secretary to Government, Bombay, to Officiating Secretary to Government of India, late Home, Revenue and Agricultural Department, No. 2464, dated 16th April, 1881, and enclosure. [Papers No. 57.]
- From Under-Secretary to Government of India, Home Department, to Secretary to Government, Bombay, No. 902, dated 15th July, 1881. [Papers No. 57.]
- From Officiating Chief Commissioner, Ajmer-Merwára, No. 520, dated 27th July, 1881, and enclosure. [Papers No. 58.]
- From Secretary to Chief Commissioner, Coorg, No. 633-10, dated 26th July, 1881, and enclosures. [Papers No. 59.]
- From Officiating Registrar, High Court, Calcutta, No. 1327, dated 4th July, 1881, and enclosure. [Papers No. 60.]
- From Her Majesty's Secretary of State, No. 29, dated 14th July, 1881.
- From Secretary for Birár to Resident, Haidarábád, No. 326, dated 19th August, 1881, and enclosures. [Papers No. 61.]
- From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 5964-10 L, dated 29th August, 1881, and enclosures. [Papers No. 62.]
- From Secretary to Government, Panjáb, No. 286S, dated 15th September, 1881, and enclosures. [Papers No. 63.]
- From Secretary to Government, North-Western Provinces and Oudh, No. 1154, dated 19th September, 1881, and enclosures. [Papers No. 64.]
- From Secretary to Government, North-Western Provinces and Oudh, No. 1174, dated 23rd September, 1881, and enclosure. [Papers No. 65.]
- From Secretary to Government, North-Western Provinces and Oudh, No. 1192, dated 27th September, 1881, and enclosure. [Papers No. 66.]
- From Chief Secretary to Government, Madras, No. 1941, dated 19th September, 1881, and enclosures. [Papers No. 67.]
- From Secretary to Government, Panjáb, No. 357 S, dated 4th October, 1881, and enclosure. [Papers No. 68.]
- From Chief Secretary to Government, Madras, No. 2009, dated 28th September, 1881, and enclosures. [Papers No. 69.]
- From Officiating Registrar, High Court, Calcutta, No. 1930, dated 20th October, 1881, and enclosure. [Papers No. 70.]
- From Chief Secretary to Government of Madras, No. 2022, dated 29th September, 1881, and enclosures. [Papers No. 71.]
- From Chief Secretary to Government of Madras, No. 2162, dated 19th October, 1881, and enclosure. [Papers No. 72.]
- From Under-Secretary to Government, Bombay, No. 7185, dated 31st October, 1881, and enclosure. [Papers No. 73.]
- From Under-Secretary to Government, Bombay, No. 6320, dated 24th September, 1881, and enclosures. [Papers No. 74.]
- From Officiating Secretary to Chief Commissioner, Central Provinces, No. 4167-132, dated 11th November, 1881, and enclosures. [Papers No. 75.]
- Office memorandum from Home Department, No. 1598, dated 17th December, 1881. [Paper No. 76.]
- From Secretary to Government, Bengal, No. 1J., dated 3rd January, 1882, and enclosure. [Papers No. 77.]

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No. III.

*A Bill to consolidate and amend the law relating to Criminal Procedure.*

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:—

PART I.  
PRELIMINARY.

CHAPTER I.

1. This Act may be called "The Code of Criminal Procedure, 1882;" and shall come into force on the first day of January, 1883;

Act X, 1872, an. 1, 2, 111, 529, 535, 540, 541. Local extent. It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed,\* by any other law now in force, or shall apply to—

Act X, 1872, an. 540. (a) the Commissioner of Police or the police in the towns of Calcutta and Bombay;

(b) any officer duly authorized to try petty offences in military bázars at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively;

(c) heads of villages in the Presidency of Fort Saint George; or

(d) village Police-officers in the Presidency of Bombay;

(e) and nothing in sections 174, 175 and 176 shall apply to the Police in the town of Madras.

Act X, 1875, an. 2. Act X, 1872, an. 2, para. 1. Act X, 1872, an. 82, 86. 2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column of the said schedule, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Act X, 1872, an. 2, last para., an. 10. All notifications published, proclamations issued, powers conferred, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, defined, passed and made under the corresponding section of this Code.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or the 'full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

(a) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a Police-officer.

(b) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person other than a Magistrate or Police-officer who is authorized by a Magistrate in this behalf;

(c) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court;

(d) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken;

(e) "Writing" and "written" include "printing," "lithography," "photography," "engraving," and every other mode in which words or figures can be expressed on paper or on any substance;

(f) "Sub-division" means a sub-division made under this Code of a District;

(g) "Province" means the territories for the time being under the administration of any Local Government;

(h) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay;



1875. (i) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjáb and the Recorder of Rangoon:

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area;

or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may from time to time appoint in this behalf:

1875. (j) "Chief Justice" includes also the senior Judge of a Chief Court:

1875. (k) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may from time to time appoint in this behalf:

1875. (l) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

(m) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

(n) "Pleader" used with reference to any proceeding in any Court means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any mukhtár or other person appointed with the permission of the Court to act in such proceeding:

(o) "Police-station" means any post declared, generally or specially, by the Local Government to be a Police-station for the purposes of this Code; and "Officer in charge of a Police-station" includes, when the officer in charge of the Police-station is absent therefrom or unable from illness to perform his duties, the Police-officer next in rank present at the Police-station above the rank of constable, or, when the Local Government so directs, any other Police-officer so present:

(p) "Offence" means any act or omission made punishable by any law for the time being in force:

(q) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:

"Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may not arrest without warrant:

(r) "Bailable offence" means an offence shown as bailable in the second schedule or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence:

(s) "Warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months:

(t) "Summons-case" means a case relating to an offence not so punishable:

(u) "European British subject" means—  
(1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grand-child of any such person by legitimate descent:

(v) "Chapter" means a chapter of this Code; New. "Chapter." and "Schedule" means a schedule hereto annexed:

(w) "Place" includes also a house, building, tent and vessel.

Words referring to acts. Words which refer to acts done extend also to illegal omissions, and

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

5. All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

## PART II.

### CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

#### CHAPTER II.

##### OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

###### A.—Classes of Criminal Courts.

Act X, 1872, s. 19. 6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

- I.—Courts of Session :
- II.—Courts of Presidency Magistrates :
- III.—Courts of Magistrates of the first class :
- IV.—Courts of Magistrates of the second class :
- V.—Courts of Magistrates of the third class.

###### B.—Territorial Divisions.

Act X, 1872, s. 12. 7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions ;

Act XI, 1874, s. 4. and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Act X, 1872, s. 13, 38. The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

Act X, 1872, s. 14. The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Act XI, 1874, s. 4. Existing Divisions and Districts maintained till altered.

Act IV, 1877, s. 5, para. 6. Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Act X, 1872, s. 39. 8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

###### C.—Courts and Offices outside the Presidency-towns.

Act X, 1872, s. 15, 16, 17, 18. 9. The Local Government shall establish a Court of Session. Sessions Division, and appoint a Judge of such Court.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns ; and the Local Government, or the District Magistrate subject to the control of the Local Government, may from time to time define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

Such Magistrates shall be called Sub-divisional Magistrates.

The Local Government may delegate its powers under this section to the District Magistrate.

14. The Local Government may confer upon any person all or any of the powers conferred or conferable by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

15. The Local Government may direct any two or more Magistrates in any place outside of the Presidency-towns to sit together as a Bench, and may invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

16. Except as otherwise provided by any order of the Local Government under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as possible shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may from time to time make rules consistent with this Act as to the distribution of business among such Magistrates and Benches; and every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may from time to time make rules consistent with this Act as to the distribution of business among such Assistant Sessions Judges.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

*D.—Courts of Presidency Magistrates.*

18. The Local Government shall from time to time appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

21. Every Chief Magistrate shall exercise in the Presidency-town for which he is appointed all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

- (a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;
- (b) the times and places at which Benches of Magistrates shall sit;
- (c) the constitution of such Benches; and
- (d) the mode of settling differences of opinion which may arise between Magistrates in session.

*E.—Justices of the Peace.*

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns, and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid), may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.